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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GARY SCHVANEVELDT, Plaintiff, v. SOUTH DAVIS METRO FIRE DEPARTMENT, a political subdivision of the State of Utah, DANE STONE, individually and as Fire Chief of the South Davis Metro Fire Department, and DOES I-X. Defendants.	**COMPLAINT** CASE NO.: 1:21-CV-00092-DBP JUDGE: MAGISTRATE: DUSTIN B. PEAD

Plaintiff Gary Schvaneveldt (hereafter "Gary") by and through his counsel of record, Randall K. Edwards and Jeanne D. Marshall, hereby complains against Defendant South Davis Metro Fire Department ("SDMFD"), as follows::

PARTIES

1. Gary is an individual, resident of Davis County, State of Utah.
2. SDMFD is a political subdivision of the State of Utah, with its principal place of business in Davis County, Utah.
3. Dane Stone ("Chief Stone") is the Fire Chief of SDMFD, and is sued in his individual capacity and, alternatively, in his official capacity as Fire Chief. As Fire Chief, Chief Stone is a policymaker for SDMFD, and is the ultimate authority for SDMFD's

compliance with federal, state and local laws, as well as the policies and procedures of SDMFD.

4. Plaintiff is unaware of the identities of those individuals or entities identified fictitiously as Does I – X, but believes that they are, or may be, liable for those actions and wrongs set forth herein, and sues them under the fictitious designation set forth herein. When the true identities of such individuals or entities is known, Plaintiff will seek to amend this Complaint accordingly.

5. The acts giving rise to this action occurred in Davis County, Utah.

JURISDICTION AND VENUE

1. The court has jurisdiction herein, in that the claims set forth herein are brought under 42 USC 1983.

2. This court also has jurisdiction over this action, which is alternatively brought under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621-634.

3. This court has federal question jurisdiction under 28 USC §1331 and 28 USC §1434(4).

4. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b)(2), in that the incidents, acts and omissions giving rise to this action occurred in the State of Utah.

FACTS

5. Gary incorporates by reference the averments of the foregoing paragraphs as though fully set forth at this point.

6. Gary Schvaneveldt (Gary) is a 48-year-old firefighter, with over 18 years of service in employment with the SDMFD, a local governmental entity in the State of Utah.

The Notice of Pre-Disciplinary Hearing.

7. On or about January 5, 2021, Gary was presented with a "Notice of Pre-Disciplinary Hearing," (hereafter "Notice"), a four-page document alleging various violations of SDMFD policies, to which five "Exhibits" were attached,[1] and referring to a "Corrective Action Matrix," ("CAM"), which formed part of the SDMFD "Manual"

[1] A copy of the Notice is attached hereto as Exhibit 1.

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BOUNTIFUL, UTAH 84010

that governs the SDMFD.[2] As discussed below, under the mandates of the Manual, the "CAM" is to be the guide by which "Corrective Action" is to be taken by supervisors in the SDMFD.[3]

8. The Notice required Gary to "be prepared to answer questions and respond to the following behaviors documented from July 17, 2020 through December 20, 2020."

9. The Pre-Disciplinary Hearing was scheduled for January 14, 2021. Prior to that date, Gary's attorney, Randall K. Edwards, provided a three and a half page "Pre-Hearing Brief" to Chief Stone, who would be chairing the Hearing.[4]

The Pre-Disciplinary Hearing.

10. The Hearing itself occurred on January 14, 2021, and was attended by Chief Stone, Deputy Chief Powers, Deputy Chief Stewart, and counsel for the SDMFD, Jayme Blakesley. The only instruction given to Gary was that this was his chance to reply to the allegations in the Notice. Under questioning by his counsel, he responded to each allegation.

The Termination.

11. On or about January 25, 2021, SDMFD, through its counsel, Jayme Blakesley, contacted Gary's attorney, told him that it was the intention of Chief Stone to terminate Gary, and offered to Gary that he could resign in lieu of termination. Through counsel, Gary declined this offer, and informed Mr. Blakesley that he would be appealing the termination.[5]

[2] A copy of the Corrective Action Matrix (CAM) is attached hereto as Exhibit 2.

[3] A copy of Policy 1017 of the SDMFD Manual, to which the CAM is appended, is attached hereto as Exhibit 3.

[4] A copy of the Pre-Hearing Brief and the cover email in regard thereto is attached as Exhibit 4.

[5] A copy of the email from Gary's counsel to SDMFD's counsel, dated January 25, 2021, is attached hereto as Exhibit 5.

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12. On January 26, Chief Stone issued his "Notice of Termination." (hereafter the Termination Letter").[6] In that Termination Letter, Chief Stone stated that among the reasons for Gary's termination were the following:

> Beginning in 2006 and continuing throughout your career with the Department, multiple efforts have been made to correct your behavior. Multiple warnings, letters, suspensions, and a demotion have had little effect on this untoward behavior. Even multiple supervisors requesting repeatedly—in some cases begging—for you to follow SDMF policy has been unsuccessful. While some supervisors were mildly successful in the short run, not one supervisor has been successful in helping you break this pattern of disregard for safety rules, policies, or protocols.

13. The Termination Letter went on to state as follows:

> The effects of your behavior have resulted in many day-to day difficulties with the Department. Below are just a few:
>
> 1. You are putting yourself and crew in harm's way by not following safety practices and policies.
> 2. Your Battalion Chief cannot trust you as an acting captain, which is required in your job description and which makes it difficult for your Battalion Chief to replace the captain position when your captain is off.
> 3. Many of our officers, acting officers, and employees refuse to work with you because they do not want to deal with your obstinance and lack of concern for safety.
> 4. You require a disproportionate management burden and, as a result, limit the time available to your captain to focus on newer and less-experienced employees or other responsibilities; and
> 5. You are setting a bad example to new firefighters who were taught in the fire academy to respect officers, follow orders, and not to argue policies, principles, or orders during their duty.

14. The Termination Letter went far beyond the "behaviors documented from July 17, 2020 through December 20, 2020," as set forth in the Notice (of Pre-Disciplinary Hearing). Instead, the Termination Letter referenced behaviors "[b]eginning in 2006 and continuing throughout your career with the Department …," and stated that the termination was "[b]ased on your history" and "years of corrective action," concluding "For these reasons, SDMF is terminating your employment, effective immediately."

[6] A copy of the "Notice of Termination" is attached hereto as Exhibit 6.

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BOUNTIFUL, UTAH 84010

The Appeal.

15. On February 2, 2021, Gary filed his Notice of Appeal.

16. On April 21, 2021, a hearing on Gary's appeal was heard by hearing officer J. Richard Catten, who had been appointed by SDMFD after the SDMFD board of trustees has recused itself from hearing the appeal.

17. The Appeal Hearing was recorded, and the proceedings were transcribed by a certified court reporter.

18. A copy of the transcript of the Appeal Hearing is attached hereto as Exhibit 7.

19. At the Appeal Hearing, Chief Stone testified that he was the one who made the ultimate determination to terminate Gary.

20. At the Appeal Hearing, Chief Stone testified that he did not consider it proper to discipline an employee based on their demeanor.

21. At the Appeal Hearing, Chief Stone conceded that "*[t]he determination to fire Gary was his demeanor at the pre-disciplinary hearing. He did not – for me, he did not take any responsibility for any of his actions.* And then I looked at the amount of discipline that he has had over the years since 2006, and the behavior has not changed with all the discipline that has happened to Mr. Schvaneveldt." Exhibit 7; Transcript, pp. 34-35 (emphasis added).

22. At the Appeal Hearing, Chief Stone went on to say that if Gary had simply "taken responsibility" for his past actions, he would not have been terminated. The Fire Chief was asked, "What would have satisfied you with regard to evidencing a willingness to change that would have saved his job?" He replied, "Had Mr. Schvaneveldt taken responsibility or even some sort of responsibility to what he has done; but instead, he did not." Exhibit 7; Transcript, p. 114. He then admitted that if Gary had "accepted the responsibility," the Chief would have saved Gary's job. Chief Stone was asked, "So it all got down to ultimately, even with all of the things that you have alleged against him, even if all of them were true, if he had had a different

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attitude, accepted responsibility, you would have kept him on?" He answered "Yeah, I believe so." Exhibit 7; Transcript, p. 115.

23. At the Appeal Hearing, when asked specifically what Gary might have said that would have shown him accepting responsibility, Chief Stone indicated that if Gary had said in the pre-disciplinary hearing that things were rough at home, and that he and SDMFD Paramedic Shafto weren't getting along very well, that it was true that lately he hadn't done his truck checks on time, that those were things that Gary was struggling with, and that he would promise that "you won't hear another peep from me in the next – whatever, how much time he had left, and I'd just appreciate if you'd consider that," Gary would still be employed by SDMFD.

24. At the Appeal Hearing, Chief Stone indicated that despite the fact that the Letter of Termination states that "You are putting yourself and your crew in harm's way by not following safety practices and policies," Chief Stone's concerns about safety, both to the Department personnel and to the public, were not based on Gary's past actions. Instead, the Chief disciplined Gary because of potential risks in the future, "prospectively."

25. At the Appeal Hearing, when asked to give specific answers to questions about the meaning of some of the conclusions of the Letter of Termination, Chief Stone, who signed the Letter, indicated that he didn't have the answers. For example, when asked to explain the assertion that "many of our officers, acting officers, and employees refuse to work with you," Chief Stone said that "I've been told by Chief Stewart and Deputy Chief Powers that that is the case." Pressed, he came up with one name; Spencer Gregory, whose name does not appear in the Letter and whose identity was revealed for the first time in the appeal hearing.

26. When asked in the Appeal Hearing to give specifics as to what he meant by saying in the Letter of Termination that Gary "require[s] a disproportionate management burden," Chief Stone said that he was referring to a note made in the SDMFD Trakstar system by SDMFD Paramedic Shafto that said that Gary was a "management drain," which

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BOUNTIFUL, UTAH 84010

the Chief had already conceded was an expression of opinion (and that he did not discipline people based on the opinions of others).

27. When asked in the Appeal Hearing "if you're going to fire a guy for 18 years of mismanagement, wouldn't it make sense that you would tell him who the people are over those 18 years that have made this opinion of yours, this conclusion, valid?" Chief Stone stated "I didn't put it in the letter, no." Asked further if he could tell the hearing officer and participants in the Appeal Hearing now, the Chief replied, "Not right offhand, no."

28. The Notice of Disciplinary Hearing contains no allegations regarding "future infractions" as a basis for discipline. The Notice is also bereft of anything regarding discipline or termination for "demeanor," "attitude," or a refusal to "take responsibility" to the Chief's satisfaction. The Notice contains no advisement to the effect of "If you will just 'take responsibility'; tell the Chief of your difficulties at home; of your personality conflicts with Paramedic Shafto; explain that you have been "struggling"; and then promise that the Chief won't hear a peep from you until you retire, you'll still have a job with the Department."

The Hearing Officer's Decision on Appeal

29. Closing arguments with regard to the Appeal Hearing were submitted in writing by counsel for Gary and counsel for SDMFD.

30. On May 14, 2021, counsel for Gary submitted Gary's closing argument to the Hearing Officer, a copy of which is attached hereto as Exhibit 8.

31. On May 21, 2021, SDMFD submitted SDMFD's closing statement to the Hearing Officer, a copy of which is attached hereto as Exhibit 9. In it, SDMFD argued that "[e]ven if a determination were made that the Department failed to follow its policies, that finding would not invalidate Ms. Schvaneveldt's termination."

32. On June 4, 2021, Hearing Officer Catten issued his Decision on Appeal, a copy of which is attached hereto as Exhibit 10.

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BOUNTIFUL, UTAH 84010

33. In the Decision on Appeal, Hearing Officer Catten stated that Gary's arguments that SDMFD did not accurately follow its own policies when it documented his violations – and more specifically that SDMFD did not perform an "investigation' prior to alleging the violations set for in the Notice, and holding the Pre-Disciplinary Hearing – were "governed by Utah caselaw," citing *Lucas v. Murray City Civil Service Commission*, 949 P.2d 746 (Utah App. 1997), and *Leavitt v. Salt Lake City Corp.*, 442 P.3d 1217 (Utah App. 2019). He stated that "There is simply no evidentiary support for any contention that had South Davis conducted the investigation described in it's [sic] policies, the outcome of this case would have been different." He concluded, "Schvaneveldt was not harmed."

34. The Hearing Officer then rendered a decision that "This appeal is hereby decided in favor of South Davis Metro Fire and against Gary Schvaneveldt."

FIRST CLAIM FOR RELIEF

(42 USC 1983 – CIVIL RIGHTS RE: SDMFD)

35. Gary incorporates the averments of the foregoing paragraphs as though fully set forth at this point.

36. As an employee of SDMFD, Gary had a property right to his public employment, of which he could not be legally deprived without due process of law – both procedural due process and substantive due process.

37. SDMFD had adopted policies with regard to discipline of its members, which included, but were not limited to, procedural requisites intended to protect the integrity of the complaint process with regard to allegations of violations of SDMFD policies, regardless of the source of the complaints. Among the policies so adopted was Policy 1016, attached to this Complaint as Exhibit 10.

38. The adoption of the policies referenced above was intended to comply with the requisites of federal, state and local laws regarding the provision of due process to members of the SDMFD.

39. Despite the adoption of the policies intended to protect the integrity of the complaint

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BOUNTIFUL, UTAH 84010

process with regard to allegations of violations of SDMFD policies, SDMFD had a custom, policy, practice, and usage of failing to provide its members with the procedural due process protections provided under its own adopted Manual regarding employee discipline, as set forth below.

40. In Gary's case, SDMFD's custom, policy, practice procedure and usage of failing to provide its members with the procedural due process protections included the following:

SDMFD's failure to afford procedural due process.

41. SDMFD's Policy 103, attached hereto as Exhibit 11, which lays out the "Purpose and Scope" of the Manual, sets forth that the Manual's provisions are to be the standard governing the actions of all members of the Fire Department.

42. The Manual sets forth in Policy 1016, attached hereto as Exhibit 10, SDMFD's requirements for corrective action and discipline of its employees.

43. Section 1016 of the SDMFD Policy Manual ("the Manual"), which was in place when Gary was asked to answer Chief Stone's allegations against him, sets forth a detailed and mandatory procedure for SDMFD to follow regarding "all allegations of misconduct." Manual, §1016.6. These procedures are to be followed before any Pre-Disciplinary Hearing occurs. See §1016.8.

44. In Gary's case, the requisites incumbent upon the Department were not followed in this case.

45. This failure of SDMFD to comply with the mandatory procedures was part of SDMFD's custom, policy and usage of failing to protect its members by complying with those mandatory procedures.

No compliance with mandatory complaint protocol.

46. Section 1016.2 of the Manual requires that "The Department will accept and address ***all complaints*** of member misconduct in accordance with this policy and applicable federal state and local law." (Emphasis added).

47. Section 1016.4.2 of the Manual provides that a supervisor who observes misconduct, or

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BOUNTIFUL, UTAH 84010

receives from any source an allegation of misconduct that could result in disciplinary action, that supervisor "shall initiate a complaint." It is required that "Supervisors shall ensure that all formal and informal complaints are documented on a complaint form," and that the supervisor "shall ensure that the nature of the complaint is defined as clearly as possible." Manual, §1016.5. The complaint should be documented in a log that records and tracks complaints.

48. In the instant case, there was no initiation of a complaint procedure, no complaint form filled out by a supervisor, and no complaint log with regard to Gary's alleged misconduct.

No investigation by a non-complaining supervisor.

49. Section 1016.1 of the Manual requires that if the complainant against a member is the member's supervisor, that supervisor shall not undertake the investigation of the complaint. Instead, another supervisor must investigate, presumably in order to protect the objectivity of the investigation.

50. This was never done in Gary's case. As demonstrated in Exhibit 1, the "evidence" that accompanied the Notice of Pre-Disciplinary Hearing consisted entirely of complaints by Gary's *supervisors,* as follows:

- a written reprimand from supervising Captain Topher regarding an incident of December 4, 2020;
- a memo to Chief Powers from supervising Batallion Chief Moss regarding a sick call on December 20, 2020;
- Trakstar notes by Mike Shafto, dated December 31, 2020; November 28, 2020, November 21, 2020, October 29, 2020, October 23, 2020, October4 18, 2020, October 11, 2020, September 22, 2020, and August 29, 2020 – all during a time that Mike Shafto was acting in a supervisory capacity;
- Trakstar notes by supervising Captain Sayre dated December 22, 2020 and December 15, 2020;
- Trakstar notes by supervising Captain Maxwell dated December 5, 2020;

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BOUNTIFUL, UTAH 84010

- Trakstar notes by supervisor Captain Kettle dated November 4, 2020; and

- Trakstar notes by supervisor Battalion Chief Stewart dated September 5, 2020 and July 18-19, 2020.

51. In none of these cases was there any independent investigation by a supervisor who was not the complaining supervisor.

52. To the contrary, Chief Stone simply accepted the representations made by the complaining supervisors without any further investigation or review

No compliance with the requisites of courtesy and professional demeanor.

53. Under the requisites of Policy 1016, when an investigator is appointed, he "should respond to all complaints in a courteous and professional manner."

54. Such was not complied with in Gary's case. Those supervisors who wrote the notes upon which Chief Stone relied, made such characterizations of Gary as follows:

- Behaving like a "toddler" (twice), a "management nightmare, and I hope that I never have to experience another employee like him in my career," "a deceitful, insubordinate employee that is a management and energy drain for anyone associated with him," and "a management vacuum." Exhibit 1, Shafto Trakstar Note, December 31, 2020.

- "I felt as though I was trying to motivate my 9 year old son, not a grown adult," "Again, it was like trying to manage a 9 year old boy and not a grown adult with 18 years in the fire service." Exhibit 1, Maxwell Trakstar Note, December 5, 2020.

55. Such observations, which Chief Stone included as a basis upon which the Notice of Pre-Disciplinary Hearing was founded, were neither courteous nor professional. To the contrary, they fly in the face of the requirements of an independent investigator – if one were to be actually appointed (which, as pointed out above, was not the case here), and of that investigator acting professionally and courteously.

No compliance with Investigation Procedures.

56. Section 1016.6.2 sets forth specific procedures that must be followed "with regard to ***any accused member*** subject to investigation by the Department. (Emphasis added). None were followed. They include the following (the requisites of Section 1016.6.2

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are set forth *in italics* below, followed by the SDMFD's actual actions (or inactions) in respect thereto in regular type):

a. Prior to any interview, the member should be informed of the nature of the investigation.

Inasmuch as there was no actual "investigation" *per se*, there was certainly no indication to Gary that he was under investigation. The best that could be said in this regard was a threat by Captain Sayre, documented in his Trakstar Note of December 15, 2020 (see Exhibit 1), in which he states that "Gary was made aware that this is his last warning. He is on thin ice and is being watched very closely. I told him that his previous verbal reprimands that are noted in Trakstar are his final warning. It was made very clear that next time he doesn't follow the policies of my expectations it would be a written reprimand." This one indication in the record of any "information" to Gary does not fit the bill of the above requirement.

e. No member shall be subjected to offensive or threatening language nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions and be subject to discipline for failing to do so. Nothing administratively ordered may be provided to a criminal investigator. An appropriate Garrity warning shall be issued to the member prior to initiating questioning.

The threat referenced above was in direct derogation of this requirement. Of course, because there was no actual "investigation," there was no *Garrity* warning issued to Gary. In fact, there is no reference in the SDMFD Manual to either the requisites or the protections of the *Garrity* warning, other than the above language.

f. The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously

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BOUNTIFUL, UTAH 84010

interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview.

There were no recordings of any interviews, and no indication to Gary that he could record any interviews. In fact, there were no "interviews" that could be recorded.

g. A member subjected to interviews that could result in punitive action shall have the right to have a representative of his/her choosing during any interrogation. However, in order to maintain the integrity of each individual member's statement, involved members shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed.

Gary was never interviewed, and was given no right to have a representative present during any "interrogation." The first chance he had to tell his side of the disciplinary story was at the Pre-Disciplinary Hearing. By then, of course, the die was cast as to what the claims against him were, and the fact that discipline was sure to ensue. He was never given a chance to confront his accusers nor, in fact, to tell his side to an independent, objective investigating supervisor.

Failure to follow Investigation Format

57. Section 1016.6.3 of the Manual sets forth a specific format for reporting all complaint investigations, that are to be "timely, detailed, [and] complete." That format requires the following:

Introduction - Include the identity of the member, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a very brief summary of the facts giving rise to the investigation.

Summary of allegations - List the allegations separately, including applicable policy sections, with a very brief summary of the evidence relevant to each allegation.

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BOUNTIFUL, UTAH 84010

> *Evidence as to each allegation - Each allegation should be set forth with the details of the evidence applicable to each allegation and include comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.*
>
> *Conclusion - A recommendation regarding further action or disposition should be provided.*
>
> *Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.*

58. No such format was followed in Gary's case, because no such report was generated with regard to each (or any) allegation made against Gary by SDMFD.

SDMFD's Failure to Provide Substantive Due Process.

59. SDMFD's Policy 103, which lays out the "Purpose and Scope" of the Manual, sets forth that the Manual's provisions are to be the standard governing the actions of all members of the Fire Department.

60. The Manual sets forth in Policy 1017, "Corrective Action" (a copy of which is attached as Exhibit 3 hereto), the following with regard to the Purpose and Scope thereof:

> Department members are required to conduct themselves in a highly self-disciplined manner, obeying Fire Department Conduct and Behavior 1015, Policy Manuals and operational standards. In situations where members do not adhere to these expectations, supervisors will take the necessary actions to correct the problem.
>
> This procedure will guide the Department supervisors in taking the appropriate Corrective Action using coaching and counseling, Performance Improvement Plans (PIP), reprimands and Discipline. When an investigation is validated under Personnel Complaints 1016, this Policy will be used to determine the appropriate action.

61. Section 1017.2 of the Manual requires that "Supervisors must refer to the Discipline Matrix for an understanding of this action."

62. The referenced "Discipline Action Matrix" is the Corrective Action Matrix, attached as Exhibit 2 hereto.

63. Under Section 1017 of the Manual, the only standard by which all supervisors are to rely

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BOUNTIFUL, UTAH 84010

in meting out discipline is the policies of the SDMFD.

64. Under the written policies and procedures of SDMFD, all discipline is to be meted out fairly, without favor, and is not to be selectively enforced against some members, in such a way that some members are disciplined for violations of SDMFD policies and others are not disciplined for the same violations.

65. Under standards of due process and fair dealing, a member may not be disciplined by SDMFD for purported violations of policy about which he has not been given adequate notice and an opportunity to respond.

66. Under standards of due process and fair dealing, discipline of a member for purported violations of policy may not be enhanced by consideration and punishment for purported violations of policy for which the member has not been given adequate notice and an opportunity to respond.

67. Under standards of due process and fair dealing, discipline of a member for purported violations of policy may not be enhanced by consideration and punishment for purported violations of policy for which the member has already been punished.

68. Despite the adoption of the Policy 1017, and its requirements, along with other requirements of equity and fairness in the administration of member discipline, as set forth above, SDMFD had a custom, policy, practice, and usage of failing to provide its members with the substantive due process protections provided under its own adopted Manual regarding corrective action, as set forth below.

69. In particular, the discipline imposed by Chief Stone – termination and deprivation of Gary's property interest in his employment with SDMFD – was entirely unjustified in this case, under SDMFD's own written substantive standards.

70. The discipline imposed by Chief Stone – termination and deprivation of Gary's property interest in his employment with SDMFD – was undertaken and accomplished in accordance with the custom, policy, practice and usage by SDMFD of failing to provide its members with the substantive due process rights that SDMFD had recognized as necessary to protect the property interests of its members.

RANDALL K. EDWARDS
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BOUNTIFUL, UTAH 84010

71. In particular, the deprivation of Gary's substantive due process rights, in accordance with SDMFD's custom, policy, practice and usage of denying such rights to its members, were as follows:

Correlating the Allegations in the Notice of Pre-Disciplinary Hearing to the Corrective Action Matrix reveals that there is no claimed misconduct meriting termination.

72. The Notice of Pre-Disciplinary Hearing set forth in Exhibit 1 hereto outlines seven asserted "behaviors" upon which discipline might be imposed, with a reference to the Corrective Action Matrix related to those behaviors.

73. Even if every allegation against Gary were true, termination is not warranted under the provisions of the Corrective Action Matrix.

74. Under the Manual that defines how corrective and disciplinary action is to be handled by the Department, the only standard set for administering discipline is the Corrective Action Matrix (Exhibit 2), which gives both the Department and its members certainty as to what is expected, and what discipline can be issued for violations of Department policy.

75. The Manual states that the Corrective Action Matrix is intended to ensure that corrective action is undertaken "in a corrective, progressive, and lawful manner."

76. As set forth above, the Corrective Action Matrix is the standard and only reference on which all supervisors are to rely in meting out discipline. *See* Manual §1017.2.

77. Correlating the referenced Corrective Action Matrix set forth in the Notice of Pre-Disciplinary Hearing with the allegations of each claimed item of misconduct demonstrates that the draconian punishment of termination was not warranted here, as set forth in the following subparagraphs:

Allegation No. 1) – "Violation of Policy 1010.8 Reporting for Duty," arising from a claim that Gary had a failure to follow proper procotol with regard to calling in sick, on December 15, 2020 and December 20,2020 – Corrective Action Matrix 15 "Improper Reporting of Disability, Sick Leave or Return to Duty"

It is difficult to determine what this claim is with regard to a

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BOUNTIFUL, UTAH 84010

violation on December 15, 2020, inasmuch as the only "evidence" provided to Gary with regard to that date is a Trakstar note from his supervisor, Captain Sayer, which does not reference sick leave, but instead only threatens him that he is "on thin ice." With regard to an alleged incident of December 20, 2020, the evidence is a memo from Battalion Chief Moss to Chief Powers indicating that Gary placed himself on sick leave without properly notifying the Battalion Chief.

A look at that Corrective Action Matrix (Exhibit 2) does not allow for termination for this offense. In reviewing this alleged misconduct, it appears that the claimed violation was a first offense, inasmuch as the Notice does not reference any prior claimed violations of this policy, and provides no evidence for the two claimed violations of this policy. The proper punishment under this Corrective Action Matrix for a first offense is "Written Reprimand to 48 hrs. Suspension/Vacation Forfeiture." Even if this were a second offense, the proper punishment is "24-192 hours suspension/Vacation Forfeiture," not termination.

Allegation No. 2) – Insubordination Major – Corrective Action Matrix 1.B. Stemming from these claimed violations:

- *Out of proper uniform on December 4, 2020, and failed to comply when told by captain;*
- *Failed to comply when told to wear proper face mask on December 4, 2020; and*
- *Failed to comply timely when told by captain to do an engine check on December 4, 2020.*

The question with regard to this allegation is whether the actions complained of were indeed "insubordination" or "major." The facts here indicate that they were not. This can be seen by reviewing Allegation No. 4 of the Notice (Exhibit 1), which apparently wishes to punish Gary twice

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for the same offenses – offenses which the Department admits are neither serious nor insubordination. Allegation No. 4, which claims a violation of Policy 1010.6 regarding reporting for duty, references the ***same claimed violations*** as those set forth in Allegation No. 2 with regard to being out of uniform:

- "Specifically, on December 4, 2020, you were out of proper uniform at the daily briefing and had to be asked to don your proper uniform;
- "Specifically, on December 4, 2020, you were out of your proper uniform and had to be told by your captain to don your proper uniform
- :Specifically, on December 4, 2020, you were told to wear proper face mask and failed to comply."

When this same conduct is referenced in Allegation No. 4, it is treated as minor offenses, which deserve reference only to Corrective Action Matrix 22. Under that Corrective Action Matrix, a first offense merits only a "verbal or written reprimand"; a second offense a "written reprimand or 4-11 hour suspension/vacation forfeiture" and a third offense a "12-24 hour suspension/vacation forfeiture." This "offense" was a first offense, in that there is nothing in the record referencing any prior offenses, but is instead limited to December 4, 2020.

This minor uniform offense would, under the referenced Corrective Action Matrix for Allegation No. 1; Corrective Action 1B., would merit only "Written Reprimand to 48 hours suspension/vacation Forfeiture." Termination is not on the table.

As to the third issue under Allegation No. 2 – the assertion that an "engine check" was not timely done after being asked by the captain to do so – this too is also treated elsewhere in the Notice of Pre-Disciplinary

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Hearing, under Allegation No. 3. One of the allegations in Allegation No. 3 is the same allegation set forth in Allegation 2: "Specifically, on December 4, 2020 you failed to perform your engine checks in a timely manner and had to be badgered to complete." Allegation No. 3 classifies this asserted misconduct, as well as 11 other instances of "Improper Performance of Assigned Duties" as "Minor." They are minor indeed. Under the referenced Corrective Action Matrix 16A., the punishment for a first offense is a written reprimand to 12 hours suspension/vacation forfeiture; a second offense is 12-48 hours suspension/vacation forfeiture; and a third offense 24-96 hours suspension/vacation forfeiture and/or demotion." No termination.

Looking at all of this in totality, even the most serious allegation against Gary – Insubordination Major – falls apart when it is seen that the department admits in other allegations that the complained of behavior is neither major nor insubordination.

Under principles of due process and good faith, a person cannot be punished twice for the same conduct; conduct which in any standard of fairness cannot be "major" and "minor" at the same time – and yet SDMFD wishes to not only classify this conduct as both, but wishes to discipline Gary twice for the same conduct. Such flies in the face of any concept of equity and fairness.

Allegation No. 3). Improper Performance of Assigned Duties – Minor.

This has been discussed above. Even if true, no termination is merited. It is "minor," by SDMFD's admission.

Allegation No. 4). Out of Uniform or no Uniform.

This has also been discussed above. No termination is warranted here, either. It is "minor," by SDMFD's own admission.

Allegation No. 5). Violation of Policy 914 (PPE) and federal code.

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and

Allegation No. 6). Violation of Department Directive 07-2020 Covid-19 and State Public Health Order 2020-25(5)(a)(i).

With regard to both of these allegations, there exists no reference thereto to any Corrective Action Matrix from which a proper punishment for this alleged wrongdoing can be garnered. Here, then, it would be a violation of Gary's due process rights to be punished for a violation of a policy, which violation does not carry with it a specific punishment – especially in light of the fact that the "Corrective Action Matrix" set forth by the Department is intended to give certainty to members of the Department of the discipline relative to claimed misconduct, and to ensure that corrective action is undertaken "in a corrective, progressive, and lawful manner," as pointed out above. As pointed out above, the Manual defines the scope of what a supervisor may and may not do with regard to discipline. *See* Manual §1017.2, set forth in footnote 3, above. This lack of certainty with regard to these claimed violations does not give the Chief *carte blanche* to simply make up a punishment, or to terminate employment. To the contrary, it limits the Chief to finding the proper Corrective Action Matrix that would apply. It was not done here.

Allegation No. 7). Corrective Action Matrix 11 "Unauthorized Activity Inefficiency." Allegation of sleeping during a training, and not getting out of bed on time on two days.

The reference in the evidence supplied to "sleeping during training" is a note in Trakstar, in which supervisor Shafto admits "I can accept that *we all doze off during training from time to time*." (Emphasis added). As to not getting out of bed on time, the Trakstar note of September 29, 2020 admits that "We did have one call the night before around 0100 which was a quick medical that was sent to the hospital," and the Trakstar note of

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August 30 admitted not only that "Aug 30th was our day two," but also that "We had a busy night and didn't make it to bed until around 0230 due to back to back calls."

Review of the referenced Corrective Action Matrix 11 (Exhibit 2) shows that the Department considers these offenses to be minor. A first offense merits punishment of written reprimand to 48 hours suspension/vacation forfeiture; a second offense merits punishment of 24-48 hours suspension/vacation forfeiture; and a third offense merits 24-96 hours suspension/vacation forfeiture and/or demotion. No termination.

Here, it is difficult to assess exactly which number "offense" the Department was accusing Gary of, inasmuch as there was no official investigation of any claimed misconduct at the time of the alleged offense, but instead the Department lumped all of these uninvestigated claims together in the Notice of Pre-Disciplinary Hearing, in which Gary was confronted by these allegations in an official capacity for the first time.

In violation of the SDMFD's policies, as well as the principle of due process, the termination was not based on only those allegations set forth in the "charging document" – the Notice of Pre-Disciplinary Hearing. The termination was based on matters not charged against Gary, and against which he was not given the opportunity to defend.

78. The original "charging document" – the Notice of Disciplinary Hearing (Exhibit 1 hereto) – required Gary to "be prepared to answer questions and respond to the following behaviors documented from July 17, 2020 through December 20, 2020." It did not instruct him to address any other alleged "behaviors," or to address any other items of alleged misconduct.

79. When it came to terminating Gary, however, Chief Stone went far beyond the allegations of the "charging document." Instead, the Termination Letter (Exhibit 6) states as bases for Gary's termination matters that were not set forth in the Notice of Pre-Disciplinary Hearing or, for that matter, even detailed in the Termination Letter.

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80. In the Termination Letter, Chief Stone indicated that he was firing Gary from his employment for, among other things, behaviors "[b]eginning in 2006 and continuing throughout your career with the Department … ." He stated that the termination was "[b]ased on your history" and "years of corrective action." Chief Stone did not list or detail what those those behaviors "beginning in 2006" were, how they impacted his decision to load them onto the matters itemized in the Notice of Pre-Disciplinary Hearing, the extent to which Gary's "history" was weighed in addition to the matters on which Gary was asked to respond in the Pre-Disciplinary Hearing, and how, exactly, the Chief could impose this further punishment for matters extending back 14 years, which had already been the subject of discipline (and which had been resolved all those years ago).

81. This action on Chief Stone's part – to either enhance the discipline asserted in the Notice of Pre-Disciplinary Hearing (albeit without any reference to the Corrective Action Matrix relative to this enhancement) or to now punish Gary a second time for actions that had already been closed long before, smacks of a sort of *ex post facto* punishment, and obviously deprived him of his due process rights.

82. SDMFD's Policy 103, which lays out the "Purpose and Scope" of the Manual, sets forth that the Manual's provisions are to be the standard governing the actions of all members of the Fire Department.

83. As Fire Chief, Chief Stone is a policymaker for SDMFD, and is the ultimate authority for SDMFD's compliance with federal, state and local laws, as well as the policies and procedures of SDMFD.

84. SDMFD's Policy 103.3 states as follows:

> 103.3 AUTHORITY
>
> The Fire Chief shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Fire Chief or the authorized designee is authorized to issue Departmental Directives, which shall modify those provisions of the manual to which they pertain. Departmental Directives shall remain in effect

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until such time as they may be permanently incorporated into the manual.

85. The actions undertaken by Chief Stone in depriving Gary of his property rights in his employment, without procedural and/or substantive due process, as set forth herein, were done under his authority as a policymaker for SDMFD.

86. At all times, Chief Stone was acting as an agent, employee, representative and policymaker of SDMFD, in carrying out SDMFD's customs, policies, procedures and usages, as set forth above.

87. SDMFD's customs, policies, procedures and usages, as set forth above, as applied, constituted a deprivation of the due process rights of members of SDMFD.

88. SDMFD's customs, policies, procedures and usages, as set forth above, are a continuing, widespread and persistent pattern of unconstitutional and harmful deprivation of the due process rights of members of the SDMFD, of which Gary is one.

89. SDMFD's customs, policies, procedures and usages, as set forth above, were, and are, the moving force behind the violation of Gary's due process rights in depriving him of his property interest in his employment.

90. In carrying out its customs, policies, procedures and usages, as set forth above, with regard to Gary's termination of employment, SDMFD deprived Gary of his due process rights, which deprivation has caused harm and damage to Gary in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(42 USC 1983 – CIVIL RIGHTS RE: CHIEF STONE)

91. Gary incorporates the averments of all of the foregoing paragraphs herein as though fully set forth at this point.

92. By this Claim for Relief, Gary asserts personal liability of Chief Stone as an alternative to any liability he may have as a policymaker of SDMFD.

93. By this Claim for Relief, Gary asserts personal liability of Chief Stone as an alternative to any liability SDMFD may have in its governmental corporate capacity to Gary.

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94. As a public employee, Gary had a property right in his employment, of which he could not legally be deprived without due process of law.

95. At all times relevant hereto, Chief Stone acted under color of state law.

96. The rights of government employees who were members of the SDMFD were clearly established statutory, constitutional and departmental rights of which a reasonable person in the position of Chief Stone would have know.

97. At all times relevant hereto, Chief Stone knew that his deprivation of Gary's property rights in his employment, through deprivation of due process of law, were in violation of the Gary's constitutional rights, as well as applicable federal, state and local laws that guarantee due process with regard to the deprivation of property rights by the SDMFD.

98. Chief Stone's actions in depriving Gary of his property rights in his employment without due process of law was a direct cause of harm and damage to Gary, in an amount that will proved at trial herein.

THIRD CLAIM FOR RELIEF

(42 USC 1988 – ATTORNEY FEES)

99. Gary incorporates the averments of all of the foregoing paragraphs herein as though fully set forth at this point.

100. Under the provisions of 42 USC 1988, the court may allow the prevailing party herein a reasonable attorney's fees in claims made under 42 USC 1983.

101. Gary is entitled to an award of attorney fees and costs in this action for his claims made under 42 USC 1983.

FOURTH CLAIM FOR RELIEF

(ADEA 29 U.S.C. §§621-634).

102. Gary incorporates the averments of all of the foregoing paragraphs herein as though fully set forth at this point.

103. The claim set forth in this Claim for Relief is averred in addition to the other claims set forth herein.

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104. Gary is 48 years old. At the time of his termination, he was 14 months away from qualifying for his 20-year retirement.

105. Fire Chief Stone and Deputy Fire Chief Powers, on behalf of, and as representatives of, SDMFD, have both told supervisory staff that "this department will really take off once we get rid of the old guys," or words to that effect.

106. SDMFD have undertaken a campaign to rid the department of senior members of the SDMFD through a series of disciplinary write-ups and the imposition of discipline, in order to cull out from the SDMFD older members over the age of 40.

107. In this instant case, the discrimination against SDMFD members over the age of 40 has culminated in the termination of Gary from his employment, in violation of his due process rights and otherwise, as set forth above.

108. Among the violations of the rights of Gary on the basis of age is the misuse of the Corrective Action Matrix ("CAM"), and the selective "prosecution," or disciplinary proceedings and/or write-ups of claimed misconduct, as set forth above.

109. The CAM is applied by SDMFD in a discriminatory fashion, in such a way that certain members of the SDMFD are disciplined for purported violations, while other, younger members of the SDMFD are not.

110. SDMFD has undertaken a policy of refusing to apply the CAM and/or the SDMFD Manual in such a way that if it were applied as it is written, most members of the SDMFD would be disciplined or terminated, but by which only certain targeted older individual members are so disciplined.

111. In the instant case, the misuse of the CAM with regard to Gary, was intended to successfully "nitpick him to death" in a way not applied to other, younger SDMFD members.

112. In the instant case, other SDMFD members, including supervisors younger than Gary, have been guilty of violations of the same policies that were alleged against Gary, (and upon which his termination from employment was based), without fear or imposition

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of punishment, while Gary was disciplined and terminated from his employment for violation of those policies.

113. Here, Gary was singled out for the purpose of getting rid of him while keeping and promoting younger members of the SDMFD. Those younger members are not, and have not been, charged with claims of misconduct for the same conduct for which Gary was terminated from employment.

114. Gary has since been replaced by members under the age of 40.

115. The actions of the SDMFD, by and through its Fire Chief and its Deputy Fire Chief, constitute a violation of the ADEA.

116. The SDMFD's violations of the ADEA were intentional and willful.

117. As a direct and proximate result of the foregoing violations of the ADEA, Gary has sustained economic and non-economic damages, including, but not limited to, denial of the wages and other benefits to which he would have been entitled had he not been discriminated against, lost interest on those wages and other benefits, loss of retirement benefits at the time that he would have qualified for had he not been terminated as a result of age discrimination, and other damages in an amount to be proved at trial.

118. Gary has complied with all requisites of the ADEA with regard to the filing of a complaint to the Equal Employment Opportunity Commission (EEOC) in order to qualify for the filing of a lawsuit.

119. On March 23, 2021, the EEOC issued to Gary a "Notice of Right To Sue," attached hereto as Exhibit 13.

120. By the filing of this action, Gary has complied with the 90-day deadline for filing an action from the date of the issuance of the EEOC "Notice of Right to Sue."

WHEREFORE, Plaintiff Gary Schvaneveldt herby prays for the following relief:

1. For general damages in an amount to be proved at trial;

2. For special damages in an amount to be proved at trial;

3. For attorneys fees and costs as allowed by law;

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4. For lost wages, employment benefits and other compensation lost to him as a result of the discrimination against him on the basis of age;

5. For prejudgment interest, as applicable;

6. For postjudgment interest, as applicable;

7. For reinstatement to the position of member of the SDFMD or, in the alternative, such damages as will qualify Gary for the instatement of such seniority as would allow him to retire at the age he would have been able to retire had it not been for the discriminatory actions against him;

8. For all other damages and relief allowed under the cited statutes above; and

9. For such other relief as this court deems just, appropriate and equitable.

DEMAND FOR TRIAL BY JURY

Unique hereby demands a trial by jury of all issues.

DATED this 17th day of June, 2021.

RANDALL K. EDWARDS
JEANNE D. MARSHALL

/s/ Randall K. Edwards
By: Randall K. Edwards

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South Davis Metro Fire Service Area

Proudly Serving the Communities of

Bountiful - Centerville - Davis County - North Salt Lake - West Bountiful - Woods Cross

Office of the Fire Chief

January 5, 2021

Gary Schvaneveldt

Notice of Pre-Disciplinary Hearing

Please take notice that a pre-disciplinary hearing has been set for Thursday, January 14, 2021 in Chief Stone's office at South Davis Metro Fire Service Area, Station 81, 255 South 100 West, Bountiful, Utah at the hour of 2:00 pm.

Please be prepared to answer questions and respond to the following behaviors documented from July 17, 2020 through December 20, 2020:

(1) Violation of Policy 1010.8 Reporting for Duty: Members should notify their Captain and Battalion Chief at his/her duty assignment location as soon practical of any inability to report for duty at the time required.

AND

Corrective Action Matrix 15 "Improper Reporting of Disability, Sick Leave or Return to Duty": Inexcusable failure to follow proper disability procedure, Abuse of sick leave or failure to notify proper persons of sick leave.

- Specifically, on December 15, 2020 you stated to your captain and crew that you would call in sick if Captain Carlsen was the call back captain. On December 20, 2020, you placed yourself on sick leave without properly notifying the battalion chief.

(2) Corrective Action Matrix 1.B "Insubordination Major": Refusal to obey legitimate orders, disrespect, insolence or like behavior in a non-emergency situation. Resulted in a written reprimand.

- Specifically, on December 4, 2020 you were out of the proper Department uniform and failed to comply when told by your captain.
- Specifically, on December 4, 2020 you were told to wear proper face mask and failed to comply
- Specifically, on December 4, 2020 you were asked to do you engine check by your captain and failed to comply in a timely manner.

(3) Corrective Action Matrix 16.A "Improper Performance of Assigned Duties Minor": Neglect or failure to satisfactorily perform the duties of the position when no potential life or property loss is involved.

- Specifically, on December 4, 2020 you failed to perform your engine checks in a timely manner and had to be badgered to complete.
- Specifically, on November 4, 2020 you had to be reminded by Captain Kettle to do your Day 2 Checks.
- Specifically, on October 18, 2020 you did not log your Day 2 Checks in a timely manner with repeated reminders from you captain, culminating in a call from the battalion chief.
- Specifically, on October 12, 2020 you did not complete your Day 2 Checks.
- Specifically, on September 28, 2020 you had to be reminded by your captain several times to complete your Engine check. Was not logged until 1700.
- Specifically, on September 5, 2020 you were requested by your captain to contact Chief Stewart about your medical testing. On September 10, 2020 when your captain checked your status, the contact had not been made.
- Specifically, on September 5, 2020 it was noted you were late on your training for the month of August being completed.
- Specifically, on August 30, 2020 you did not complete your Day 2 Checks.
- Specifically, on August 29, 2020 you were asked by you captain five times to log your daily checks. This was not completed until that evening at 2230.
- Specifically, on July 19, 2020 you were late in logging your vehicle checks.
- Specifically, on July 18, 2020 you were late in logging your vehicle checks.

(4) Violation of Policy 1010.6 Reporting for Duty: All members should don the appropriate uniform prior to the start of their work assignments and be properly attired at all times when representing the Department.

AND

Corrective Action Matrix 22 "Out of Uniform or no Uniform": When reporting without proper uniform or not having uniform available.

- Specifically, on December 4, 2020 you were out of proper uniform at the daily briefing and had to be asked to don your proper uniform.
- Specifically, on December 4, 2020 you were out of your proper uniform and had to be told by your captain to don your proper uniform.
- Specifically, on November 28, 2020 you were out of uniform and wearing shorts at 1220 hours when told by your captain to don proper uniform at 0800 and again at 1130.
- Specifically, on October 11, 2020 you were out of proper uniform on a medical and had to be reminded by your captain to comply with the uniform policy.
- Specifically, on September 22, 2020 you were out of proper uniform on two separate occasions where your captain had to remind you to don proper uniform.

(5) Violation of Policy 914 Personal Protective Equipment and Federal Code (29 CFR 1910.132): Members shall be expected to wear the PPE any time there is a risk of exposure to a hazard.

- Specifically, on October 29, 2020 you arrived at a gas leak without proper protective equipment (turnouts). When asked by your captain to put on your turnouts, you came back with only half of your ensemble stating it was too hot.

(6) Violation of Department Directive 07-2020 Covid-19 and State Public Health Order 2020-25 (5) a i. Statewide restriction. Regardless of a county's transmission area designation, a business shall require each employee and contractor to wear a face mask while at work.

- Specifically, on December 4, 2020 your continued failure to properly take the necessary precautions of wearing the mandated facemask throughout the shift exposing your crew and construction visitors to the SARS Covid-19 virus.

(7) Corrective Action Matrix 11 "Unauthorized Activity Inefficiency": Idleness, participation in activities while on duty which are outside regularly assigned or authorized activities, avoidance of work.

- Specifically, Sleeping during training by an outside agency on October 23, 2020.
- Specifically, on September 29, 2020 not getting out of bed until 0730.
- Specifically, on August 30, 2020 staying in your bedroom until 0950.

The evidence to these allegations along with your previous performance history are attached as Exhibits A through E.

As this is an active personnel action, you may not discuss this or any other allegations, incidents, complaints with any employees or any person that is or may be a witness to any complaint and are specifically forbidden from taking any retaliatory action against any employee or person. Such action will be considered as an additional basis for discipline.

Pre-Disciplinary Hearings are required by Federal and State law whenever a government employer seeks disciplinary action of more than two days without pay, demotion, or termination.

You will be on paid administrative leave pending the outcome of this hearing.

It is your option to respond in writing; respond orally at the hearing date or both.

Dated this 5th day of January 2021.

_____

Dane Stone, Fire Chief

ACKNOWLEDGEMENT OF RECEIPT

Name: _____

Gary Schvaneveldt

Exhibit A
Written Reprimand

Submitted by Topher Maxwell, on 12/16/2020 14:59.

Corrective Action Notice

Employee Name *

Gary Schvaneveldt

Date of Complaint *

12/15/2020

Investigator

Topher Maxwell

INTRODUCTION *

We worked together December 4, 2020. I was the officer and you were the Engineer. Throughout the course of the day it became increasingly difficult and frustrating to manage and lead you because of your casual and flippant attitude toward the policies and directives of Metro Fire. It began in the morning when you were not dressed appropriately for the day as we covered the daily plans, goals, and expectations. It continued when there was no drive or exigence in completing your daily truck check, when I had to ask you to don your 5.11 sweatshirt on a medical call, and when you fought me on wearing a mask while in the public areas of the station and when around others.

SYNOPSIS *

This written reprimand is specifically for failure to follow Directive 06-2020, dated 11/09/2020, even though there were several other instances that could have qualified for a written reprimand. In our morning planning meeting, one of the things that I asked was that you adhere to this directive. I asked you to wear a mask while in the public areas of the station, and expressed that if you needed a break, I had no problem with you being separated and in a room alone. Throughout the course of the day there were several times that you failed to follow this mandate, and I even approached you on it at least twice. One instance was in the morning, when you were in the bay talking to several different contractors. Everyone there had a mask on except you. When I asked you to put a mask on, you complied, but I shouldn't have to ask again. The expectation had already been laid out that morning. In the afternoon we all sat down in the day room to watch the Reading Smoke training, and there was no attempt whatsoever to wear a mask. Instead, you carried a drink with you, to appear as though you were constantly drinking, even though the directive provides no exception to eating or drinking. Another instance was in the afternoon, when you were between the kitchen and day room, working on a departmental history project. At that point I asked you again to wear a mask and you gave me several different excuses and reasons why you didn't want to. In that exchange I was basically pleading for you to follow the directive. At the end of the exchange, I told you that if you refused to comply, I would have to document it in Trakstar. Your comment was to do it, to which I rebutted that I didn't want to have to. It was a directly insubordinate move on your behalf.

EVIDENCE OF ALLEGATIONS *

There were several witnesses to the exchanges that we had. The foremost being Firefighter Knowles. She was there and heard the morning meeting, both of the uniform conversations, and the Trakstar conversation in the afternoon. The contractors were also present and aware when I asked to to put on a mask around them One was the architect for Hogan Construction, one was Richard Hales with the water department, and there were two others that are unknown to me.

CONCLUSION *

No matter your political views, personal beliefs, or careless attitude; there is an expectation that you follow all policies and directives while you are at work. The policies and directives are there protect all of our employees and to maintain order throughout the workplace. On a daily basis, there is a requirement and expectation that you perform your duties in a timely fashion and that you do them well. These daily activities prepare you to be able to perform at a high level while at the station and on the fireground. When you fail to perform the most basic of duties, it puts others at risk and it is seen by others. As an Engineer, you are viewed as a leader, a mentor, and an example to the more than 70 employees your junior. This organization needs, and requires you to follow all of the mandates that have been set before you, to follow them wholly and to follow the timelines established. The expectation moving forward is that you adhere to and comply with all of the policies and directives of Metro Fire without deviation.

Untitled *

Verbal Reprimand
Written Reprimand
PIP
Suspension
Demotion
Termination
No Action

Type of Offense *

Policy Violation

Violation of Safety Practices

Violation of Law

Substandard Work

Violation of Professional Standards;

Code of Conduct

Recommendations for future actions *

My recommendation is that a PIP be developed, in order to ensure your knowledge of policies and to track your ability to follow commands and adhere to the policies. I believe that there is zero room for flexibility in your actions. If your officer lays out expectations and timelines for your actions, those timelines and actions must be met. If you are unable to meet those requirements, your failure to comply must be documented so that further corrective action can take place, if necessary.

Signature

See Pg #3 Dep

No matter your political views, personal beliefs, or careless attitude; there is an expectation that you follow all policies and directives while you are at work. The policies and directives are there protect all of our employees and to maintain order throughout the workplace. On a daily basis, there is a requirement and expectation that you perform your duties in a timely fashion and that you do them well. These daily activities prepare you to be able to perform at a high level while at the station and on the fireground. When you fail to perform the most basic of duties, it puts others at risk and it is seen by others. As an Engineer, you are viewed as a leader, a mentor, and an example to the more than 70 employees your junior. This organization needs, and requires you to follow all of the mandates that have been set before you, to follow them wholly and to follow the timelines established. The expectation moving forward is that you adhere to and comply with all of the policies and directives of Metro Fire without deviation.

EXHIBITS

Download or Show File

Untitled *

- [ ] Verbal Reprimand
- [x] Written Reprimand
- [ ] PIP
- [ ] Suspension
- [ ] Demotion
- [ ] Termination
- [ ] No Action

Type of Offense *

- [ ] Policy Violation
- [ ] Violation of Safety Practices
- [x] Violation of Law
- [ ] Substandard Work
- [ ] Violation of Professional Standards
- [ ] Code of Conduct

Recommendations for future actions *

My recommendation is that a PIP be developed, in order to ensure your knowledge of policies and to track your ability to follow commands and adhere to the policies. I bel for flexibility in your actions. If your officer lays out expectations and timelines for your actions, those timelines and actions must be met. If you are unable to meet those r comply must be documented so that further corrective action can take place, if necessary.

Signature

Exhibit B
Witness Statements

To: Chief Powers

From: Chief Moss

Date: December 21, 2020

Re: Sick call off by Gary Schvaneveldt

On December 20th at 1700 I was checking CrewSense to confirm I was staffed for my next shift I was working on December 21st for "A" platoon. I noticed that Gary Schvaneveldt had placed himself off on sick leave for the shift. I texted Chief Stewart just to confirm if he had made any contact with him by chance. Nope. I did text Gary around 1715 hours to find out his intend for the sick call off. This is Gary's response.

"My wife wants me to call off sick most days I'm scheduled to work so when I when I really think my can't take care of herself and the kids I will call in sick and that was 14 hours before I'm scheduled not the morning of or 8 hours before"

"I thought if she slept most of Saturday and today she would feel better but when she wakes up at 5 and feels no better I'm not ok leaving her home with the 2 kids"

My response/text: "I get that, but it's not your place to put yourself off sick in CrewSense!!! It is your responsibility to call or text the BC and inform them what you need. It's the policy!!

At that point I went back to my staffing for December 21, 2020 and made some changes to cover his open shift. I did look at comments made in CrewSense by Gary and approved his time off.

Respectfully Submitted,

Battalion Chief Steve Moss

12/21/20

On December 15th at 7:00 we gathered as crew just after shift change. As we sat at the kitchen table discussing the information given in the pass off the discovery was made that the next set we'd be working with Captain Willy; and that Captain Carlson would be working at station 85.

Because these two captains were working at the others home station the statement was made Gary if they move Captain Carlson to station 84 are you still coming in, his response was nope I hate Carol Baskins. I laughed thinking Gary was just joking. I am not sure if Gary chose to not come into work due to having to work with Captain Carlson or some other reason, but I do know Gary and Captain Carlson do not have a good working relationship. After a few minutes at the table I went down to do my morning checks.

Michael Shafer

Firefighter/A.E.M.T

Mshafer@sdmetrofire.org

Exhibit C
Trakstar Notes

December 31, 2020

Shafto - I had the privilege to be the acting officer at Station 84 from September through December. With this opportunity, I was tasked with the responsibility of observing Engineer Schvaneveldt because he is either unwilling to fill the acting officer role himself, he is not capable of accomplishing the duties, or a combination of both. During this time, I was able to reflect on previous experiences from 2017 when I was in the same position. It is my impression that Engineer Schvaneveldt has had little positive change in his performance over the years despite clearly knowing the job expectations associated with his rank. Engineer Schvaneveldt is very capable of performing at a high level when he chooses, but he has made it very clear that he is not willing to conform to department expectations and policies that he has been made aware of on multiple occasions.

During my time with Engineer Schvaneveldt, I experienced push back multiple times a day for basic tasks that included: waking up for morning tones, proper uniform, proper PPE including wearing a mask, and completing other parts of the duties outlined in his job description such as: PS Trax, Training, or anything that doesn't align with his ideals.
When I have talked to Engineer Schvaneveldt, his attitude appears to show little self-accountability or motivation to improve or to meet minimum standards. He has always expressed self-justification in his actions and believes he knows what is in the department's best interest. A classic example of this thought process is when we were talking as a crew about the Governor's mask mandate (which he is very against), and he asked me "what would you say if you were in Smith's shopping and saw me without a mask and open carrying a gun?" My response was asking why he would even think it was appropriate to act that way just to antagonize people and make them feel uneasy. He replied that he wouldn't be antagonizing people; he would only be exercising his constitutional rights as an American. Other examples of his poor professional work presence are listed here for reference. He consistently is looking to push boundaries and test everyone around him to see what he can get away with. This type of behavior is common in toddlers and is a management vacuum.
Another example is when we had to meet Chief Stewart at LVH to pick up some additional masks following a call. When we arrived at LVH, Chief Stewart was parked on the East side of the Ambulance Bay waiting for us. Engineer Schvaneveldt traveled south along with the building and then pulled into the Handicapped Parking stalls in front of the parking terrace. I specifically told him, "Do Not Park Here," and that I would jump out, get the PPE, and meet them in the approved parking south of the helipad. Engineer Schvaneveldt did park there despite direct orders. When I returned to the engine, I confronted him, and he said that he didn't hear me say not to park there, possibly because the headsets were cutting out. Firefighter Knowles immediately said that she heard me loud and clear. Engineer Schvaneveldt then changed his story, saying that it was okay to park there because he stayed in the

engine the whole time and would have moved if someone needed one of those parking spaces. With continued discussion, his rationale changed a few more times. One was that it saved me from having to walk, then changed it again that he has "EX" plates that allowed him to park where ever he wanted. This incident illustrates Engineer Schvaneveldt's insubordination, disrespect for rules, and lack of accountability.

Call # 20-6549 was dispatched as a full arrest. EN 84 arrived first with Engineer Schvaneveldt, Paramedic Holland, and myself. Holland and I were the first to enter the home and locate the patient while Engineer Schvaneveldt put on a gown and mask. We started to move the patient to the front entry so we would have space to work. Engineer Schvaneveldt was told to set up the auto pulse so that the patient could go directly on the unit, and mechanical compressions could start without delay. As we were moving the patient Engineer Schvaneveldt was asked to help move the patient because the auto pulse appeared ready to go. The pt was placed directly on the auto pulse after being moved from the back room. It was then discovered that the life band still had the Velcro connected, and that band was actually under the auto pulse itself, making the device useless. While attempting to detangle the unit, I likely pulled the band out of alignment, furthering the unit's uselessness. While this ended up being a self-inflected GSW to the head, and no amount of care we provided would have changed the outcome, it was still very frustrating for everyone on the scene. When I talked to Engineer Schvaneveldt about what happened, he replied that he was trying to set up the device when we called for help and he responded to provide assistance. There was never any communication to the crew that the auto pulse was not set up before coming to helpmate the patient. He seemed confused as to why we couldn't use the unit to provide compressions and did not accept accountability for any of his actions. He seemed more concerned about talking about how he didn't know how anyone was able to work in masks and gowns and mentioned that he had to step outside of the house during the call because he could breathe or function in his mask and gown.

Call # 20-6806 was a carbon monoxide alarm that came in while Engineer Schvaneveldt was in the shower. Firefighter Knowles had been working on her ADO packet and this allowed her to drive while responding to the call, so we didn't have a delayed response. FF Knowles and I were turned out in bunkers and ready to go when Engineer Schvaneveldt arrived at the engine. I was able to help navigate to the call and give FF Knowles some tips for driving. When we arrived, we jumped out, ready to work. I walked to the back of the engine to get my helmet, and Engineer Schvaneveldt was sitting in the back seat dressed in only his Class B uniform while handing me the four gas and playing on his phone. Despite Engineer Schvaneveldt never leaving the engine or making an attempt to get dressed or any effort to assist his crew, we were able to take care of the citizen and provide exemplary service before finding out that they were a Bountiful City Council Member. After the call I asked Engineer Schvaneveldt why he never got dressed and ready to assist, he replied that we didn't need him, but if we did, he would more than happy to help out. I explained that part of his job is putting on his turnouts and being part of the crew while on calls. I further explained that at no time did I consider it acceptable behavior for him to stay on the engine when we go on calls. Engineer Schvaneveldt has a wealth of knowledge and

should be mentoring employees, not being the example of what not to do. Clearly he is only willing to be a part of the crew and be of assistance on his terms.

Call # 20-6583 was a GLF with A82 and EN84 located at 132 East 3000 South, Bountiful. I was mapping Engineer Schvaneveldt from station 84 and felt like he was blatantly disregarding navigation directions in an attempt to get canceled before we arrived. Starting with me saying we should go down Chelsea Dr, but he went down Indian Springs. I instructed him to turn on 200 East and even counted down which street to turn on, but he chose to go to Davis Blvd before turning. Essentially, we drove in almost a full circle around the scene before arriving because he decided to disobey directions. All of this was after we talked as a crew about how slow he appears to respond to specific calls in an attempt to get canceled before we arrive, which he adamantly denied. When I questioned Engineer Schvaneveldt about this, he said that my headset was cutting out, and he couldn't hear me.

When Engineer Schvaneveldt is questioned about regularly not doing truck checks, his reply is, "it is the responsibility of the off going crew to ensure that the rig is ready to go for me, so I don't need to do a check." When he is asked about whether he is doing that for the oncoming crew, Engineer Schvaneveldt confidently says that he always replaces everything he uses before leaving. In my time with Engineer Schvaneveldt, rarely have I seen him put the engine in pump; one of those times resulted in the crew having to reload the minuteman because he didn't ensure that the valve was closed and resulted in him charging the line while still being in the hose bed. I've never seen him start a saw, visualize the water level in the tank or add water, or do much more than open the bin and take a quick look inside. I've also not seen him check any of the other rigs housed at station 84. Engineer Schvaneveldt is aware of the engineer's expectations and standards that have been set by the department. Even with constant daily reminders from myself or other officers he does not meet the minimum standards.

I do believe Engineer Schvaneveldt cares about the department. Examples of this are the countless hours he has put in as the President of the Association and organizing parties. He set up days for people to go to Cross E Ranch for Halloween and called every member to extend an invite personally. He also attended all of these events so that he could handle any problems if needed. Engineer Schvaneveldt has been very vocal against wearing masks and during these Halloween parties, he refused to wear a mask or to have his family wear masks despite being the representative for SDMF. Engineer Schvaneveldt also is very dedicated to the history of firefighting in Davis County and has put many hours into scanning and logging photos along with keeping a photo journal of the Station 84 remodel. He has been interested in being part of the design and decision making associated with the construction project. Whenever there has been a project meeting or walkthrough, he has followed the group around asking questions, making small talk, and ultimately being more of a distraction than a help. Engineer Schvaneveldt is continuously looking for ways to improve morale by thinking of new ways that the department can give back to the guys. Popular topics include bounce houses for parties, bleachers for the parade, monthly meetings where retired members can come in and tell stories, the foyer Christmas Tree, better bereavement policies, more people off per day on vacation, and better staffing to eliminate mandatory overtime.

The most significant changes that I have personally observed since my previous experience managing Engineer Schvaneveldt shows that he is currently more disgruntled with the administration and rebellious towards the policies and procedures. I've seen an overall increase in his sense of entitlement has resulted from his internal justifications and belief that he is one of the smartest, intelligent, and able employees at South Davis Metro Fire. These problems have been compounded by an ongoing lack of management the Engineer Schvaneveldt has had from previous officers. This lack of management is largely due to his ability to identify and pursue captains that have not held him accountable for meeting the minimum standards of the department. In my observation, there is nothing that the department or administration could do, say or ask that will ever satisfy him or cause him to comply with policies and standards set forth. Engineer Schvaneveldt has made it very clear with his actions that he resigned as an employee years ago and transitioned into merely occupying a position based on his need for a paycheck. He has mentioned that he refuses to work with specific people on countless occasions and that he will call in sick if they are scheduled with him.

Engineer Schvaneveldt is a management nightmare and I hope that I never have to experience another employee like him in my career. As a senior member of our department, he should be a mentor and a role model for others not an insubordinate conniving drain on resources. Engineer Schvaneveldt is very skilled at staying in gray areas and requires constant supervision and guidance similar to a toddler. If you repeatedly ask him to do something he will eventually comply only to revert his behavior as soon you change your focus or look away. All of Engineer Schvaneveldt's actions individually are easily overlooked by a quick glance or short term exposure to him. However, with prolonged exposure and long term evaluation of all of his individual actions, the big picture becomes clear. Engineer Schvaneveldt is a deceitful, insubordinate employee that is a management and energy drain for anyone associated with him.

December 22, 2020
Sayre - This note is in regard to Gary calling off sick December 21&22

Last round on December 15 we were sitting at the kitchen table discussing me being off on vacation next round. The schedule showed Captain Willey working at 84 and Captain Carlsen working at 85 on December 21. Gary said if Tom gets moved to 84 to be the Captain he will call in sick. At this time I thought Gary was joking around.

Captain Carlson was moved on crew sense to the Captain spot at 84 on December 21. I saw last night that Gary had indeed called in sick for this round December 21&22. According to South Davis Metro Policy 1051.3.3 SICK LEAVE ABUSE/SUSPECTED ABUSE it states, In determining sick leave abuse, supervisors should look for patterns of sick leave use in determining abuse. I'm not accusing Gary of not being sick or having a legitimate reason for calling in sick but my suspicion is that he called in sick due to having to work with Tom Carlson.

Gary also did not follow the protocol for calling in sick. According to South Davis Metro Policy 1010.8 INABILITY TO REPORT FOR DUTY it states, Members should notify their

Captain and Battalion Chief at his/her duty assignment location as soon as practicable of any inability to report for duty at the time required. Gary had never notified me.

December 15, 2020

Sayre - Today was my first day back with Gary since being away at the recruit academy. I had a closed door, sit down with Gary today about the last few months and his notes in trakstar. Gary had not seen any of the notes and has not logged into trakstar since his last review in July. We talked about each note and the recurring themes that have been taking place. There where multiple notes about late pstrax, sleeping in, not wearing uniform, not wearing mask and insubordination. Gary was made aware that this is his last warning. He is on thin ice and is being watched very closely. I told him that his previous verbal reprimands that are noted in trakstar are his final warning. It was made very clear that next time he doesn't follow the polices or my expectations it would be a written reprimand. With that being said, I went over a list of my expectations which including the following:

1. pstrax to be done by 0900 both days.
2. Engine check (fluids), pump check, use creeper and start all small equipment.
3. Day 1 uniform on by 0715.
4. Day 2 up by 0700 and uniform on by 0730 unless working out.
5. When in bay appropriate uniform and station boots.
6. Mask will be worn at all times as outlined in the policy.
7. Participate in all training including new timber-wolf training and teaching the rest of A platoon.
8. Target solutions and lexipol will be done by due date.
9. All fires, alarms, CO, gas leaks, smoke scare will be in full PPE. Was told to wear bunker bottoms when responding to calls.
10. Respond in as a crew on medicals. No more dropping us off then parking or turning around.

I was very clear in letting Gary know the seriousness of his actions and the consequences to follow if these expectations are not meet. I told him if any of these expectations are not meet it would be a written reprimand and moved up the chain of command. My hope for Gary is, for him to realize that the department is not out to get him but needs him to do his job and take responsibility. I asked if he had any questions to which he replied no.

December 5, 2020

Maxwell - Yesterday I worked with Gary at station 84. We started the day well, and I laid out my expectations of the whole crew. Some of those things were to wear full turnouts on all fire calls, for Gary I asked that he drive with his bottoms on, at least. I asked that, if we were already in the engine, and we got dispatched to a fire related call that he pull over and get dressed prior to continuing to the scene. I asked that the daily checks be done, and I asked that they participate in the training that afternoon on reading smoke. I also asked that they wear masks, according to the directive, when they were in public areas and that they could be mask free when alone in rooms.

Throughout the course of the day Gary did well at some of the things I had asked, but he was really frustrating in other areas. I felt as though I was trying to motivate my 9 year old son, not a grown adult that already knows what should be done. To Gary's credit, he did a great job at wearing turnouts on fire calls, as I had asked, and he was involved and engaged in a very mediocre Target Solutions training. He was also very involved in how to better our canyons access book. He had some good insights and could do a really good job with that, however when it came to some of the routine things, I had to continually ask him and remind him of what needed to be done. I had to remind him to change into his appropriate uniform in the morning and on a medical call I had to ask him if he had a 5.11 and to put it on. I felt like I had to press him to log the truck check that he had done, and ultimately I ended up doing a portion of it to try and motivate him. He finished it out ultimately.

The part that became most frustrating to me was that he wouldn't wear a mask, even after being asked over and over, and only when I asked would he put one on. At one point we had contractors over at the station, interacting with Gary, and I had to ask him, in the middle of it, to put a mask on, which he finally did. He wore one in the engine responding on calls, but when in the station it was off more than it was on, and he was regularly in rooms with others. Most of the time he had a drink next to him, so that he could say that he was actively eating or drinking, but there was really more of an intent to avoid the regulation than to abide by it. At one point, in my frustration, I asked him to wear a mask and he said he couldn't do it and gave me a number of excuses why. I said, "Gary, if you don't wear a mask I'm going to have to make notes in Trakstar, and I really don't want to. I just need you to do what you are supposed to do." "Make a note," was his response. The fact that he made no attempt to isolate himself or comply with the regulation, and was somewhat flippant when I pressed him to conform, became really frustrating. Again, it was like trying to manage a 9 year old boy and not a grown adult with 18 years in the fire service.

November 28, 2020
Shafto - Today @ 1130 I had to ask Gary to put on a uniform because he was still wearing shorts after coming out of his room around 0800. This sparked a discussion about how he was "wearing department provided clothing." I had to explain that gym shorts are not appropriate or approved uniform attire and should typically only be worn while working out. @ 1220 when we let Gary know that lunch was ready he said that he would be just a minute because he still had to go put his pants on (I confirmed that he was still actually wearing shorts).

November 21, 2020
Shafto - We were at station 85 picking up a random assortment of station 84 belongings from the back conex. It was decided that we would use the new HSM 85 box truck to get everything back in one trip. Gary went and got the truck and was going to back it up to start loading everything up. I was standing in the back corner, waiting for Gary. As he started backing up, I thought he was watching me and using me as his spotter. I noticed that there was a Bluetooth speaker still sitting on the back bumper. I was concerned that this would fall off the back of the truck and get damaged or backed over, so I tried to get Gary to stop. It was very apparent that Gary was not watching me as his backer and continued to back approx 10ft while I was

waving my arms and yelling, trying to get him to stop. He finally stopped and put on the airbrake, and we continued without any further incident. He had no clue that I was even trying to get him to stop.

November 4, 2020
Kettle - Late Day 2 checks. Had to be reminded.

October 29, 2020
Shafto - EN84 was dispatched to a gas leak. We arrived on the scene Meg and I were already bunked up and ready to work. Gary was not wearing any PPE and has stated that it is hard to drive EN84 with his bunkers on. As meg and I walked over to assess the scene I asked Gary to put on his bunkers. While we were assessing the scene Gary walked over but was only wearing his bunker bottoms with no coat or helmet. I then asked him to please put the rest of his PPE on. He told me that the reason he hadn't put on the rest of his PPE was that it was too hot outside. The high temp in Bountiful today was 60F. After he made this comment he did follow orders and go put on his jacket and helmet which he wore for the rest of the call. There was clearly no gas problem on this scene because the gas had been shut off to the property for months prior to the building being demolished. However, the construction crew smell gas and didn't know where it was coming from. Our monitor showed 0%. While we were on the scene we did have a couple of gusts of wind that smelled like gas but the monitor never picked anything up.

October 23, 2020
Shafto - Today medical training was provided by 2 UMC doctors who came into station 81 to provide the training via zoom. Gary was asleep in the 84 recliners in full recline mode. Both Meg and I woke him up several times but he would just go right back to sleep. This was very frustrating and unprofessional. I can accept that we all dose off during training from time to time. But most employees will do something to show that they care and not just go right back to sleep.

October 18, 2020
Shafto - Gary did not put in the day 2 check until after 1840 when we got we got a call from BC Stewart asking why they had not been done yet. I had asked him no less than 3 times during the day if they were done yet.

October 11, 2020
Shafto - Gary put in day 1 checks before 0900 on day 1
Day 2 checks not completed
Had to remind Gary to put on a badge shirt or sweater while on the medical call at the church on Orchard and Wicker.

October 11, 2020
Shafto - Yesterday Gary did not do his PsTrax Day 1 checks off until after 1700 hrs despite talking about it a few times throughout the day. I never visually saw him perform a pump check, tip the cab, or get on the creeper for an undercarriage check.

September 29, 2020

Today I had to wake Gary up at 0730. We did have one call the night before around 0100 which was a quick medical that was sent to the hospital with AM81.

September 22, 2020
Shafto - On Tuesday, Sept 22nd we had two separate medical calls that Gary was not wearing his appropriate uniform (no badge shirt or approved Cancer shirt). He expressed that due to the ambient temps (high of 86F) and the mask he was getting overheated and didn't feel well.

Gary was talked to about needing to wear the appropriate uniform. Since this time Gary has been very diligent in ensuring that he has been wearing an appropriate uniform per SDMF policy any time that we have been out of the station.

September 5, 2020
Stewart - August Delinquent Training:
NFPA 1500 Bloodborne Pathogens SafetyTargetSolutions Course
NFPA 1021 Pre-Incident PlanningTargetSolutions Course
NFPA 1001 Fire Detection, Alarm & Suppression Systems

August 29, 2020
Shafto - Aug 29th was my first shift with Gary as the acting officer. I asked Gary several times (more than 5) to log the daily truck checks is PSTrax. My last request was via text message @ 2149. Gary did finally log the day 1 check around 2230 that evening and never logged a day 2 check.

Aug 30th was our day two. We had a busy night and didn't make it to bed until around 0230 due to back to back calls. Gary did not come out of his dorm room until 0950.

July 18-19, 2020
Stewart - Late PS Trax documentation 7/18-19 shift

Exhibit D
Performance Evaluation Core Competencies 2020

September 30, 2020

Performance Review on the following core competencies Schvaneveldt

	65%
Communication	B
Displays Commitment	C
Works Efficiently	C
Interpersonal Skills	C

Exhibit E
Previous Corrective Action

February 25, 2018
Written Reprimand and Suspension – Failure to perform assigned duties

December 2, 2018
Written Reprimand – Late to work by over an hour.

June 2, 2011
Written Reprimand – Substandard work.

May 28, 2011
Verbal Reprimand – Not ready for tour of duty.

December 16, 2010
Written Warning – Failure to properly document EMS reports.

December 15, 2010
Verbal Warning – Failure to properly document EMS reports.

June 5, 2006
Pre-Disciplinary Hearing – Demotion from engineer to firefighter.

April 5, 2006
Written Warning – Sleeping and failure to check equipment.

March 16, 2006
Written Warning – Sleeping and failure to check equipment.

January 23, 2006
Verbal Warning – Sleeping and failure to check equipment.

1017.5 DISCIPLINE MATRIX

See attachment: Matrix1.pdf

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Matrix1.pdf

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CORRECTIVE ACTION MATRIX

OFFENSE	EXPLANATION	PEN		
		1st Offense	2nd Offense	3rd Offense
1. Insubordination (Non-emergency) A. Minor	Deliberate delay or failure to carry out assigned work or instruction in a reasonable period of time.	Written reprimand to 24 hr. Suspension.	25 – 72 hrs. Suspension and/or Demotion.	73 – 210 hrs. Suspension and/or Demotion.
B. Major	Refusal to obey legitimate orders, disrespect, insolence or like behavior.	24 – 72 hrs. Suspension and/or Demotion.	72 hrs. to Dismissal Suspension and/or Demotion.	Dismissal
2. Insubordination (Emergency Conditions) A. Minor	Deliberate delay or failure to carry out assigned work or instructions in a reasonable period of time.	8 – 96 hrs. Suspension	120 hrs. to Dismissal Suspension and/or Demotion.	Dismissal
B. Major	Refusal to obey legitimate orders, disrespect, insolence or like behavior.	120 – 210 hrs. Suspension and/or Demotion.	Dismissal.	
3. False Statements, Misrepresentation, deceit, concealment. A. Minor	When there is evidence of misunderstanding and member has not attained personal gain and department relations are not adversely affected.	Written Reprimand.	4 – 24 hrs. Suspension	25 – 210 hrs. Suspension and/or Demotion.
B. Major	Deliberate misrepresentation, fraud, falsification or concealment.	24 hrs. to Dismissal. Suspension and/or	Dismissal	
4. Under the influence of intoxicants or drugs or possession in fire station.	Physically or mentally impaired to perform duties because of use of drugs or intoxicants. (Includes odor of intoxicants or drugs.)	Written reprimand to 72 hrs. Suspension.	24 hrs. to Dismissal. Suspension and/or Demotion.	Dismissal
5. Disorderly Conduct. A. Minor	Threatening bodily harm, continued use of abusive language or other actions which adversely affects morale or maintenance of discipline.	Written reprimand to 24 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.	24 hrs. to Dismissal. Suspension and/or Demotion.

Case 1:21-cv-00092-DBP Document 2-2 Filed 06/18/21 PageID.50 Page 3 of 7

CORRECTIVE ACTION MATRIX

OFFENSE	EXPLANATION	PENALTIES		
		1ST Offense	2nd Offense	3rd Offense
B. Major	Inflicting bodily harm on another.	24 hrs. to Dismissal. Suspension and/or Demotion.	96 hrs. to Dismissal. Suspension and/or Demotion.	Dismissal
6. Gambling	Promotion of, or participation in gambling while on duty.	Written reprimand to 24 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.	72 hrs. to dismissal. Suspension and/or Demotion.
7. Theft	Actual or attempted taking and carrying away Fire Department property or the property of others.	24 hrs. to dismissal.. Suspension and/or demotion to dismissal.	Dismissal	
8. Loss of, damage to, unauthorized use of, negligent use of, improper maintenance or destruction of Department property, records or information. A. Minor	When carelessness but **no willfulness** or intent is involved.	Written reprimand to 8 hrs. Suspension.	8 – 24 hrs. Suspension and/or payment for property at replacement cost.	24 – 96 hrs. Suspension and/or Demotion and/or payment for property at replacement cost.
B. Major	When willfulness or intent is involved, or unauthorized use is involved. Attempting to cover, conceal or failure to report.	Written reprimand to 48 hrs. Suspension and/or payment for property at replacement cost.	24 – 96 hrs. Suspension, Demotion and/or payment for property at cost.	Dismissal.
9. Misconduct	Conspicuous misconduct which adversely affects the reputation of the member or reflects unfavorably on the Department.	Written reprimand to 48 hrs. Suspension.	24 hrs. Suspension to Dismissal.	72 hrs. Suspension to Dismissal.
10. Failure to meet standards in appearance, uniform, dress or personal habits.	Personal uncleanliness, poor appearance, disagreeable habits, habitually soiled or poorly maintained clothing, violation of uniform standards, equipment or facilities.	Written reprimand.	4 – 24 hrs. Suspension.	25 – 96 hrs. Suspension and/or Demotion.
11. Unauthorized activity, inefficiency.	Idleness, participation in activities while on duty which are outside regularly assigned or authorized activities, avoidance of work.	Written reprimand to 24 hrs. Suspension.	12 – 48 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.

Case 1:21-cv-00092-DBP Document 2-2 Filed 06/18/21 PageID.51 Page 4 of 7

CORRECTIVE ACTION MATRIX

OFFENSE	EXPLANATION	PENALTIES		
		1ST Offense	2nd Offense	3rd Offense
12. Deriving or seeking to derive personal benefit under color of uniform	Unauthorized use for personal gain or gain for another, or influence, or to obtain immunity.	Written reprimand to 24 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.	96 hrs. Suspension to Dismissal.
13. Violations of Department Operating Standards or directives not specifically mentioned herein.	Reference published Standards, Division Directives, Memo's or Resolutions of the Board of Trustees	Written Reprimand to 24 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion to Dismissal.	48 hrs. Suspension and/or Demotion to Dismissal.
14. Violations of safety practices and regulations. Failure to provide and use safety equipment.	Failure to observe safety practices and regulations thereby endangering property or persons	Written Reprimand to 24 hrs.	24 – 48 hrs. Suspension and/or Demotion.	25 – 96 hrs. Suspensions and/or Demotion to Dismissal.
15. Improper reporting of disability, sick leave or return to duty.	Inexcusable failure to follow proper disability procedure, Abuse of sick leave or failure to notify proper persons of sick leave.	Written Reprimand to 48 hrs. suspension.	24 – 192 hrs. Suspension.	48 hrs. Suspension and/or Demotion to Dismissal.
16. Improper performance of assigned duties. A. Minor	Neglect or failure to satisfactorily perform the duties of the position when no potential life or property loss is involved.	Written Reprimand to 12 hrs. Suspension.	12 – 48 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.
B. Major	Conspicuous neglect or failure to perform duties when potential life or property loss is involved. Dereliction of duty.	Written reprimand to 72 hrs. Suspension and/or Demotion.	48 – 192 hrs. Suspension and/or Demotion to Dismissal.	72 hrs. Suspension to Dismissal.
17. Failure to receive an alarm.	Involving a person or company scheduled to respond.	Written reprimand to 48 hrs. Suspension and/or Demotion.	24 – 192 hrs. Suspension and/or Demotion.	Dismissal

Case 1:21-cv-00092-DBP Document 2-2 Filed 06/18/21 PageID.52 Page 5 of 7

CORRECTIVE ACTION MATRIX

OFFENSE	EXPLANATION	PENALTIES		
		1st Offense	2nd Offense	3rd Offense
18. Failure to follow prescribed radio procedures and practices. A. Minor	Negligence in or failure to transmit reports or follow instructions in non-emergency situations where no loss of life or property is involved.	Written Reprimand.	4 – 24 hrs. Suspension and/or Demotion.	24 – 96 hrs. Suspension and/or Demotion.
B. Major	Negligence in or failure to transmit reports or follow instructions in emergency situations where loss of life or property is involved.	Written reprimand to 48 hrs. Suspension and or Demotion.	24 hrs. Suspension and/or Demotion to Dismissal.	Dismissal
19. Unsatisfactory training by Company Officer.	When it is judged that an officer has not prepared his company.	Written Reprimand.	4 – 24 hrs. Suspension. PIP	25 – 48 hrs. Suspension and/or Demotion.
20. Unsatisfactory training by member.	When it is judged by the Company Officer or Training Division that member's performance was unsatisfactory.	Written Reprimand.	4 – 24 hrs. Suspension. PIP	24 – 48 hrs. Suspension and/or Demotion.
21. Failure to file reports promptly.	When reports are required within a time frame.	Written Reprimand.	4 – 24 hrs. Suspension.	24 – 48 hrs. Suspension and/or
22. Out of uniform or no uniform.	When reporting without proper uniform or not having uniform available.	Verbal or Written Reprimand	Written Reprimand or 4-11 hr. Suspension	12 – 24 hrs. Suspension.
23. Error in response to location of an emergency.	Failure to receive address. Failure to respond to the proper location of the emergency.	Written Reprimand to 24 hrs. Suspension.	12 – 96 hrs. Suspension and/or Demotion.	48 – 192 hrs. Suspension and/or Demotion.
24. Delay in response to location of an emergency.	Unnecessary delay of unit or personnel to an emergency.	Written reprimand to 48 hrs. Suspension.	12 – 96 hrs. Suspension and/or	48 hrs. Suspension and/or Demotion to
25. Negligence in operation of a vehicle.	Causing or unnecessarily risking damage to a vehicle due to negligence.	Written Reprimand to 24 hrs. Suspension.	24 – 96 hrs. Suspension.	48 – 192 hrs. Suspension.

Case 1:21-cv-00092-DBP Document 2-2 Filed 06/18/21 PageID.53 Page 6 of 7

CORRECTIVE ACTION MATRIX

OFFENSE	EXPLANATION	PENALTIES		
		1st Offense	2nd Offense	3rd Offense
26. Indecent or immoral conduct.	Conduct judged not within the norm of the Community standards and/or conduct not appropriate for employees in a position of public trust.	Written reprimand to 96 hrs. Suspension and/or demotion.	48 hrs. Suspension and/or demotion to dismissal.	72 hrs. Suspension and/or demotion to dismissal.
27. Tardiness: Habitual failure to report for shift on its starting hour and having supervisor unaware of your presence.	1 – 14 minutes. 15 – 30 minutes.	Written reprimand. Written reprimand.	Written reprimand to 24 hrs. Suspension. Written reprimand to 48 hrs. Suspension.	24 – 48 hrs. Suspension and/or demotion. 48 – 96 hrs.
28. Failure to report over 30 minutes tardiness. A. Minor	When no willfulness or intent is involved.	Written reprimand to 24 hrs. Suspension.	12 – 72 hrs. Suspension and/or Demotion.	48 – 96 hrs. Suspension and/or Demotion or Dismissal.
B. Major	When willfulness or intent is involved.	24 – 96 hrs. Suspension and/or	72 – 192 hrs. Suspension and or Demotion or Dismissal.	
29. Accumulation of unrelated offenses.		Written Reprimand to Suspension.	Suspension and/or Demotion.	Suspension to Dismissal.
30. Conviction of a crime involving moral turpitude. A plea of guilty ….. etc.		Written Reprimand to Dismissal.	Dismissal.	
31. Discourteous treatment of the public or other employees.	Failure to provide good service to the public, discourteous treatment or inappropriate language used with the public or other employees.	Written reprimand to 48 hrs. Suspension.	24 – 96 hrs. Suspension and/or demotion.	48 hrs. Suspension and/or demotion to dismissal.
34. The failure of good behavior which is of such a nature that it causes discredit to the Department. On or off-duty.		Written Reprimand to 48 hrs. Suspension.	24 – 96 hrs. Suspension and/or Demotion.	72 hrs. Suspension and/or Demotion to Dismissal.

Case 1:21-cv-00092-DBP Document 2-2 Filed 06/18/21 PageID.54 Page 7 of 7

Corrective Action

1017.1 PURPOSE AND SCOPE

Department members are required to conduct themselves in a highly self-disciplined manner, obeying Fire Department Conduct and Behavior 1015, Policy Manuals and operational standards. In situations where members do not adhere to these expectations, supervisors will take the necessary actions to correct the problem.

This procedure will guide the Department supervisors in taking the appropriate Corrective Action using coaching and counseling, Performance Improvement Plans (PIP), reprimands and Discipline. When an investigation is validated under Personnel Complaints 1016, this Policy will be used to determine the appropriate action.

1017.2 POLICY

It is the policy of the Department that supervisors administer Corrective Action in a corrective, progressive, and lawful manner.

Corrective in the sense that the supervisor and member come to an understanding about the causes and/or reasons for a member's deficiencies, correct those deficiencies, and restore the member to a productive and positive employment status.

Progressive in that Corrective Action will normally begin with a Verbal Reprimand or warning and, when circumstances of separate or related incidents warrant, proceed to Written Reprimand(s), suspension without pay, demotion, and finally to dismissal.

Lawful in that the Department will provide Due Process rights whereby employees are givien reasonable notice and an opportunity for the employee to respond to allegations (See Policy 1016).

An incident of misconduct may require any of these forms of Corrective Action whether or not a lesser form has preceded the action. This would depend upon the severity of the offense. Supervisors must refer to the Discipline Matrix for an understating of this action.

The principal objective of Corrective Action is to improve or correct performance, efficiency and morale of the member receiving Corrective Action as well as that of the Department. To the extent authorized bu Utah law, Corrective Action proceedings and the results thereof are confidential. The supervisor is responsible for maintaining this confidentiality. All media inquiries pertaining to Corrective Actions shall be directed to the Fire Chief. Under Utah law, contents of a reprimand or separation notice are public record and may be subject to disclosure.

It is mandatory that supervisors seek support from their superiors prior to proceeding to disciplinary action, and feel comfortable that their supervisors can support their actions in a formal review or appeal process. Support from supervisors is extremely important when Corrective Action beyond a verbal reprimand is being considered. The Administrative Deputy Chief, upon request of the supervisor, is available to provide staff support and guidance in any Corrective Action.

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1017.2.1 DEFINITIONS

Corrective Action - The overall goal of improving employee performance.

Discipline - The term used for Corrective Actions that are punitive in nature and may be subject to certain due process and appeals rights (Utah Code 10-3-1106).

Performance Improvement Plan (PIP) - See attachment: PIP_Guide_080707.pdf A written agreement between the supervisor and employee under which the employee's performance will be evaluated for a specific period of time

1017.3 DETERMINING THE PROPER CORRECTIVE ACTION

After an incident or complaint has been thoroughly investigated and the need for Corrective Action determined, a decision concerning the action that would be most effective must be made. Factors to be considered in making these decision are:

- Seriousness of the offense.
- Member's past history with the Department.
- Past practice of the Department in dealing with similar offenses (See Department Discipline Matrix).

Consistency is critical to any Corrective Action system. Although Corrective Action for the same offenses should be "similar," the final decision to determine the exact action will be made after considering the factors previously listed and applying them to the particular member and situation. The supervisor should document the basis for the individual member's Corrective Action and the factors considered in determining the Corrective Action.

1017.4 PROGRAMS FOR IMPROVING JOB PERFORMANCE

In most cases minor job performance problems can be resolved by the supervisor bringing the problem to the attention of the employee and the employee making the proper modification in his/her performance. When a serious job performance problem is identified, the supervisor must decide upon the following appropriate corrective action or actions:

- Training
- Employee Assistance Services
- Non-Disciplinary Counseling
- Warnings or
- Disciplinary Action

Each situation will be considered separately, and it will be the supervisor's responsibility to document the performance or behavior problem and make a determination as to the best course of action to take to resolve the situation. If the situation is determined to be a training problem, a program for improvement will be developed for the member. This may best be accomplished through the use of a Performance Improvement Plan (PIP)

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Corrective Action

When utilizing the Performance Improvement Plan (PIP) to prepare for improvement, attachments must be included that clearly identify the member's problem area(s). These attachments must include measurable objectives for improvement. The program must also indicate a reasonable time frame within which the objectives are to be met. At the completion of the evaluation period, if the member's performance has been corrected, it should be so noted on the PIP. If the member's performance has not improved sufficiently, the situation should be dealt with as a disciplinary problem.

Employee Assistance Program - Occasionally supervisors will be approached by a member with personal problems who requires assistance. Many times just listening and helping the member reason through the problem will be all that is needed. Other times, particularly with serious alcohol, drug, stress, marital or financial problems, the member may require professional assistance. This help is available through the Employee Assistance Program. Supervisors must be aware that when a member's personal problems result in and/or include violations of Departmental Rules or Policies, additional corrective or disciplinary action may be necessary in addition to entering the Employee Assistance Program.

Notes - These are performance related observations placed in Trakstar which do not yet rise to formalized action.

Verbal Reprimand- This is the most often used and least severe of the formal group of corrective actions. It is, simply stated, a verbal reprimand. When properly administered, it serves to notify employees that certain behaviors or performance deficiencies need changing/improving or further progressive corrective action will take place. The supervisor should keep notes of the counseling session for future reference and guidance. Notes or records of this action should be placed in the supervisor's files of the employee and attached in Trakstar under the employees name. If corrective action continues, then the verbal warning will be placed in the employee's personnel file.

Written Reprimand- A formalized Corrective Action step of a more serious nature than verbal reprimand. It may be a written reprimand exclusively, or have additional punitive actions associated with the written reprimand. This will be placed in Employee's Personnel File.

Disciplinary Action - Suspensions, Demotions and Dismissals are utilized as punitive, yet corrective measures taken for numerous repeated incidents of rule infractions or a single major infraction by a a member (See Discipline Matrix). It is the responsibility of the supervisor to stabilize a situation in which immediate action is necessary. This may require relieving the member from duty (with pay) until a decision is made concerning the official action to be taken. Supervisors should not commit themselves to a particular form of disciplinary action prematurely.

Supervisors will follow the procedures in 1016.6 thru 1016.11 when conducting investigations.

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1017.5 DISCIPLINE MATRIX

See attachment: Matrix1.pdf

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14 January 2021

South Davis Metro Fire
255 South 100 West
Bountiful, Utah 84010

via email
dstone@sdmetrofire.org

ATTN: Chief Dane Stone

Re: Disciplinary Hearing
Gary Schvaneveldt

Dear Chief Stone,

This office represents Gary Schvaneveldt, a long-time (over 18 years) employee of the South Davis Fire District (hereafter "Gary"), with regard to the disciplinary hearing scheduled for 2:00 p.m. on 14 January 2021. I am appearing on his behalf, in accordance with South Davis Metro Fire Policy 1017.9(c). While I understand that the policy does not anticipate a full-blown hearing, in which witnesses are presented and cross-examined, and that the hearing is not intended to be an adversarial or formal process, I am writing in order to present information and perspectives that may be lost in the shuffle of a hearing of limited time. I appreciate the opportunity to get this information to you.

I have carefully reviewed the Notice of Disciplinary Hearing dated 5 January 2021, and the alleged specific behaviors listed, the Exhibits (including the Trakstar Notes in Exhibit C), and have taken some time to review the various Corrective Action Matrices referenced in the Notice.

I make the following observations.

First of all, Gary will be responding in full and as thoroughly as possible to every averment set forth in the Notice, upon inquiry. I believe that his responses will adequately show that many of the averments set forth are simply wrong. Others are greatly exaggerated and, unfortunately, it appears that some are simply pretextual – as an excuse to punish Gary for actions that do not merit discipline. It is clear that Gary is "under a microscope" to some degree, and that his superiors are looking for any excuse to punish or fire him. At least one of his superiors has admitted that Gary "is on thin ice and is being watched very closely" by the department.

In this regard, I note that in his note of December 5, 2020, Captain Maxwell states that in

dealing with Gary he "felt as though I was trying to motivate my 9 year old son, not a grown adult that already knows what should be done." He goes on to repeat that "[a]gain, it was like trying to manage a 9 year old boy and not a grown adult with 18 years in the fire service." This hardly seems like an observation that is either objective or professional. Instead, it appears that Captain Maxwell's remarks are intended to somehow justify a personal vendetta, and to confirm an institutional bias against Gary.

More evidence of this general attitude appears from notes by Captain Sayre, dated 15 December 2020, in which he indicates that he is giving Gary his "last warning," informing him that "[h]e is on thin ice and is being watched very closely," and that this is his "final warning."

The culmination of this pattern of administrative impropriety in dealing with Gary is demonstrated in the three and a half page diatribe authored by Fireman/Paramedic Shafto in the Trakstar Notes (Exhibit C to the Notice), dated 31 December 2020. In it, he characterizes Gary's actions as the "*type of behavior common in toddlers and is a management vacuum.*" He goes on to state that Gary is guilty of "*insubordination, disrespect for rules, and lack of accountability*." In so doing, he again compares Gary to a *toddler*, and states that he is "a *management nightmare*," going on to say that "I hope that I never have to experience another employee like him in my career." He concludes that "the big picture becomes clear" when one has "prolonged exposure" to Gary, and ends his observations by saying that "Engineer Schvaneveldt is a *deceitful, insubordinate employee* that is *a management and energy drain for anyone associated with him*." (Emphasis added). Again, this inflammatory name-calling, and the attitude it shows, is completely inappropriate in any professional setting, and evidences bias and an intention to "get" Gary, rather than to make even a cursory attempt to comply with the Department's stated policy that corrective action is to be administered fairly, and in an effort to correct, rather than to vilify, an employee whose actions require analysis and correction. It is worth noting here that of the 26 different bullet-point "behaviors" to which Gary must respond, seven of them are dated 4 December 2021, obviously stemming from Gary's dealings with Fireman Shafto.

It is within this context that the "behaviors" cited in the Notice should be analyzed.

For example, of those "behaviors" that the Notice, on page 1 thereof, indicates invokes Corrective Action Matrix 1.B "Insubordination Major," (and, according to the matrix, carry the most severe possible penalties), none appear to be either insubordination or major. All stem from 4 December 2020, and comprise such minor offenses as "out of proper uniform," "failing to comply when told to wear proper face mask" and "failing to do an engine check in a timely manner." Gary will set forth in the hearing his side of the story, which will indicate that even these assertions of incorrect "behaviors" have been overblown, it is difficult to see how any – or the combination – of these "behaviors," even if true, constitute insubordination, or that any perceived insubordination is "major,"

and justifies the imposition of any of the punishments set forth in the matrix. (It should be noted here that I could find no prior instances in which insubordination was either alleged or proven against Gary, and thus, even if this allegation were to be upheld, it would appear that it is a first offense, and that the lightest punishment would be warranted.)

I would point out the same with regard to the other allegations, such as "Improper Performance of Assigned Duties; Minor" on page 2 of the Notice. Despite the fact that it appears that there is something of a "piling on" of minor instances of alleged improper performance of assigned duties (regarding which Gary will present his side of the story, especially with regard to doing vehicle checks), it would appear that even if all of these disputed assertions were true, they are not serious and do not require severe punishment, but rather corrective action.

As to the assertions regarding being without his proper uniform, it appears from the allegations and the "supporting" reports that these are picayune violations at worst, and that when reminded, Gary has complied with minor deviations from the uniform policies.

The same holds true with regard to the allegations regarding sleeping. Explanations exist regarding sleeping in on two occasions (where Gary was up all night on calls), and, with regard to "sleeping during training by an outside agency," Firefighter Shafto admits that "we all doze off during training from time to time." Citing Gary for it under these circumstances appears to be selective and unfair enforcement of a violation of which "we all" are guilty. Again, these appear to be minor violations that possibly require correction and not punishment.

I would echo what Fireman/Paramedic Shafto grudgingly admits with regard to Gary, that "I do believe Engineer Schvaneveldt cares about the department … Engineer Schvaneveldt is continuously looking for ways to improve morale by thing of new ways that the department can give back to the guys." I would add that Gary's years of service and his dedication to his work shows an attitude of service to the community and to the department.

Like any employee, Gary is not without room for improvement. He is willing and able to take such corrective action is necessary to improve. It would, however, be both unfair and, ultimately, legally suspect, if he is severely disciplined and punished for those "behaviors" listed in the Notice. To the contrary, the Department would be making a terrible mistake in demoting or even losing the services of this veteran firefighter, who "cares about the department," who has been an integral part of saving lives and property in Davis County, and who deserves every chance the Department can afford him.

Letter to Chief Stone
Re: Gary Schvaneveldt

14 January 2021

I request that the disciplinary hearing be recorded, in order that there be a full record in the event that an appeal is necessary.

Sincerely,

/s/ Randall K. Edwards
Randall K. Edwards

Randall Edwards

From: Randall Edwards <randall@randallkedwards.com>
Sent: Monday, January 25, 2021 9:40 AM
To: 'jblakesley@hgblaw.net'
Cc: 'Todd Godfrey'
Subject: Gary Schvaneveldt

Dear Mr. Blakesley and Mr. Godfrey,

After consultation and consideration, my client, Gary Schvaneveldt, has determined to decline the South Davis Fire District's offer to allow him to resign in lieu of termination. Instead, he will appeal the termination.

Accordingly, please provide to this office all documentation and other materials, including a copy of the recording, as well as a transcript, of the predisciplinary "hearing" In this matter.

I look forward to working with you further on this matter.

Randall K. Edwards, PLLC
Attorney at Law
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Bountiful, Utah 84011
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South Davis Metro Fire Service Area

Proudly Serving the Communities of

Bountiful - Centerville - Davis County - North Salt Lake - West Bountiful - Woods Cross

Dane Stone, Fire Chief

January 26, 2021

Gary Schvaneveldt
3725 N 1100 W
Pleasant View, UT 84414

Re: Notice of Termination

Dear Mr. Schvaneveldt:

This letter is to inform you that your employment with South Davis Metro Fire ("SDMF") is terminated, effective immediately. The bases for this decision were your numerous, repeated violations of policies, procedures, and rules that are documented in the January 5, 2021 Notice of Pre-Disciplinary Hearing ("Notice"), a copy of which is attached hereto and incorporated herein by reference.

Before making this decision, SDMF carefully considered the information presented by you and your attorney Randall Edwards at the January 14, 2021 Pre-Disciplinary Hearing ("Hearing"). The Hearing was an opportunity for you to provide reasonable explanations for your behavior or to identify possible inconsistencies or inaccuracies with the behavior outlined in the Notice.

During the Hearing and in the written materials submitted by your attorney prior to the Hearing, you and Mr. Edwards questioned SDMF's motivations, asserted that the language used in the Notice and in Trakstar notes was unprofessional, explained your reasons for violating certain rules (e.g., that you couldn't wear a mask due to anxiety, that you couldn't drive the engine with protective clothing and footwear, and that you slept in and slept through training due to late-night calls, and that other people did the same things without reprimand), and that other employees exhibit similar behavior without reprimand.

After reviewing the Notice and considering the information you and your attorney presented at the Hearing, we were left with four conclusions: (1) neither you or your attorney disputed your behavior; (2) your negative behavior persisted over years of service and under multiple supervisors; (3) your behavior and attitude belie a general disregard for personal or public safety; and (4) you offered justifications for your behavior but did not express a willingness to change.

Board of Trustees: *Randy Lewis – Clark Wilkinson – Bob Stevenson - Len Arave - Ken Romney - Rick Earnshaw*

P.O. Box 1547 • Bountiful, Utah 84011 • 801-677-2400 • Fax 801-677-0166

Your statements indicate a disregard towards following Department policies, directives, and standards. This is especially true when you disagree with them. The justifications you provided never once involved seeking help, assistance, or remedies to correct the problem.

This type of behavior is not new with you. Beginning in 2006 and continuing throughout your career with the Department, multiple efforts have been made to correct your behavior. Multiple warnings, letters, suspensions, and a demotion have had little effect on this untoward behavior. Even multiple supervisors requesting repeatedly—in some cases begging—for you to follow SDMF policy has been unsuccessful. While some supervisors were mildly successful in the short run, not one supervisor has been successful in helping you break this pattern of disregard for safety rules, policies, or protocols.

The effects of your behavior have resulted in many day-to day difficulties with the Department. Below are just a few:

1. You are putting yourself and crew in harm's way by not following safety practices and policies.
2. Your Battalion Chief cannot trust you as an acting captain, which is required in your job description and which makes it difficult for your Battalion Chief to replace the captain position when your captain is off.
3. Many of our officers, acting officers, and employees refuse to work with you because they do not want to deal with your obstinance and lack of concern for safety.
4. You require a disproportionate management burden and, as a result, limit the time available to your captain to focus on newer and less-experienced employees or other responsibilities; and
5. You are setting a bad example to new firefighters who were taught in the fire academy to respect officers, follow orders, and not to argue policies, principles, or orders during their duty.

Based on your history, attitude, and unwillingness to change, SDMF does not view continued corrective action as an option. Policy 1017 Corrective Action states: "the principal objective of Corrective Action is to improve or correct performance, efficiency and morale of the member receiving Corrective Action as well as that of the Department."

Unfortunately despite years of corrective action, your performance, efficiency, and morale have not improved. The morale of the Department is suffering because of your actions. By refusing to wear a mask, rise on time, perform proper vehicle inspections, or wear protective equipment, you place other employees and the people you serve at risk. Based on your past behavior, SDMF does not believe continued or future actions will be successful.

For these reasons, SDMF is terminating your employment, effective immediately. SDMF cannot continue to allow our employees and Department to be put at risk by your actions.

As you currently have property belonging to SDMF, it is expected you return or provide a method for our staff to obtain these items. Most importantly this would include the historic information, pictures, computer files, etc., which are the property of SDMF. Please contact Deputy Chief Powers to arrange for these exchanges, including you obtaining your personal items from the Department.

You can appeal this action to the Board of Appeals by submitting a written Notice of Appeal to SDMF Recorder Nicole Dandurand within ten (10) days of the date of this Notice of Termination. If you have any questions on the appeals process, you may contact Deputy Chief Powers.

Sincerely,

Dane Stone
Fire Chief

SOUTH DAVIS METRO FIRE SERVICE AREA

GARY SCHVANEVELDT,)
) HEARING
Appellant,)
)
vs.)
) HEARING OFFICER:
SOUTH DAVIS METRO FIRE) J. RICHARD CATTEN
SERVICE DISTRICT,)
)
Appellee.)

April 21, 2021 - 9:00 a.m.

Location: South Davis Metro Fire
Administrative Offices
255 South 100 West
Bountiful, Utah

Reporter: VICKY McDANIEL, CSR, RMR

A P P E A R A N C E S

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WITNESSES

NAME	PAGE
DANE STONE	
Direct Examination by Mr. Edwards	12
DAVID KETTLE	
Direct Examination by Mr. Edwards	70
STEVE MOSS	
Direct Examination by Mr. Edwards	73
Cross-Examination by Mr. Godfrey	78
Redirect Examination by Mr. Edwards	80
DANE STONE	
Direct Examination (Continued) by Mr. Edwards	84
Cross-Examination by Mr. Godfrey	125
Redirect Examination by Mr. Edwards	134
DAVID POWERS	
Direct Examination by Mr. Edwards	145
Cross-Examination by Mr. -Godfrey	188
Redirect Examination by Mr. Edwards	189
LANE PRICE	
Direct Examination by Mr. Edwards	194
Cross-Examination by Mr. Godfrey	209
DAVID POWERS	
Further Redirect Examination by Mr. Edwards	202

MICHAEL SHAFTO	
Direct Examination by Mr. Edwards	215
Cross-Examination by Mr. Godfrey	234
Redirect Examination by Mr. Edwards	238
CHAD WILLEY	
Direct Examination by Mr. Edwards	242
Cross-Examination by Mr. Godfrey	244
Redirect Examination by Mr. Edwards	246
RILEY SAYRE	
Direct Examination by Mr. Edwards	247
Cross-Examination by Mr. Godfrey	255
Redirect Examination by Mr. Edwards	256
CHRISTOPHER MAXWELL	
Direct Examination by Mr. Edwards	258
Cross-Examination by Mr. Godfrey	270
Redirect Examination by Mr. Edwards	271
GARY SCHVANEVELDT	
Direct Examination by Mr. Edwards	272
Cross-Examination by Mr. Godfrey	306

* * *

5

P R O C E E D I N G S

HEARING OFFICER: All right, we'll call this hearing to order. My name is Richard Catten. I'm the hearing officer today in this matter. And if we can have each party put their appearances on the record.

MR. EDWARDS: Randall Edwards on behalf the appellant, Gary Schvaneveldt. And I have with me my client, Gary Schvaneveldt, whose name is almost impossible to spell. But we'll get it on the record. It's on the record here somewhere.

HEARING OFFICER: Thank you.

MR. GODFREY: Todd Godfrey for the South Davis Metro Fire Service Area.

MR. STONE: Dane Stone, Fire Chief, South Davis Metro Fire.

HEARING OFFICER: All right. Just as a preliminary matter, how we're going to proceed today is the appellant, Mr. Edwards and his client will go first, followed by the South Davis Fire Department. And then Mr. Edwards will have another chance to rebut what the fire department has presented. The fire department may in fact have another chance to speak after that. We'll have closing arguments at the end. We've discussed that among the parties.

6

They're each agreeable to that process.

One other item we need to put on the record is the burden of proof in this case. And the burden of proof in this case when it comes to factual matters is substantial evidence. That burden is on the South Davis Fire District, so that's something I'll be weighing in my decision.

When it comes to legal matters, there's going to be some discretion standard.

THE REPORTER: I'm having a bit of trouble hearing you.

(Off the record briefly.)

HEARING OFFICER: All right. First item up, actually, is we have an objection to certain evidence from Mr. Schvaneveldt's attorney, and we're going to discuss that first. So I'll let you proceed to tell your side of that argument.

MR. EDWARDS: We have made an objection to the admission into evidence and consideration of the full file having to do with Mr. Schvaneveldt. He was only asked to respond to the matters that were raised in the pre-disciplinary notice, which is before you as Exhibit No. 1 in the binder that we've got. And we believe that it would be not only unjust and unfair, but it would violate due process for him to

7

be required to respond to matters in this hearing as well as in the -- well, in this hearing at all, but in anything having to do with anything that was outside what it was that he was disciplined for. The issue here is discipline and whether the discipline that was imposed on him is just and should be upheld.

The matters that were raised with regard to the pre-disciplinary notice are the only ones that he was requested to respond to. We will get into that during the evidence; but we believe that anything over and above or outside that is prejudicial to him, and on that basis we object to that evidence.

HEARING OFFICER: Mr. Godfrey?

MR. GODFREY: The position they're taking, your Honor, would make employment -- past employment history completely irrelevant, and the case law of this state is contrary to that. If you look at the case of Ogden City vs. Harmon, which is at 116 P.3d 973; case of South Jordan vs. Perez, which is 320 P.3d 42; the case of Taylorsville City vs. Taylorsville Employee Appeal Board, 298 P.3d 1270; in each of those matters the court made it clear that an employee's past employment history becomes relevant in an eventual disciplinary decision.

8

Now, the employee, when he comes to a pre-disciplinary hearing, is called to answer for a specific amount of conduct that's noticed in it, in that pre-disciplinary notice. But after that's reviewed and discussed and the fire chief has a decision on discipline to make, it would be completely, I think, silly to say you can't include an employee's whole history in considering what discipline is appropriate. And the department's policies specifically call on the chief to look at his employment history in making his decision on whatever discipline is important.

If you took this situation, it would be improper for the chief to consider a completely clean record as a mitigating circumstance. That's just not the law. It's clear in this state that a past employment history is a relevant consideration when the decision of what discipline is to be meted out is made.

And that's our position. We think it's completely appropriate that it be considered, and, in fact, we think it has to be to make a rational decision.

HEARING OFFICER: Mr. Edwards, it's your motion. Would you like a final word?

9

MR. EDWARDS: All right. Well, I've heard what Mr. Godfrey said, and I just think he's wrong. It does indicate in the policies and procedures that in issuing discipline that the fire chief can look at the history and look what it is that the employee has done. I do not believe, however, that entry into this proceeding of the employment history would be proper, because I think that it would be prejudicial. If the fire chief wants to testify that he has reviewed every single thing and can pinpoint every single thing in that particular file that he relied on in coming up with his disciplinary decision, I believe that it may be relevant. But I don't believe that it is relevant at this point to simply throw the entire thing in front of you, have you make a decision on that. Because I believe that, given what it is, we need to know exactly what it is that was relied on.

So at this point I believe that admitting that into evidence would be prejudicial and should be excluded.

HEARING OFFICER: Okay. So I am going to deny your motion. In my mind, the work history, as Mr. Godfrey stated, is clearly relevant, particularly in a progressive discipline type situation, which is

10

what this is, and which is what is contemplated under South Davis Fire District's rules.

Also a factor in my decision is that his disciplinary history was attached to his predetermination notice, so he was given notice up front that that was part of the decision. It's in their rules that's part of the decision. I don't think he was blindsided by that.

The question -- I'll be honest; I still have a question in my mind as to whether it's the entire file or whether it's just the disciplinary history that was relied on; and to that extent, I'll reserve judgment. If you're going to enter something that is outside of the disciplinary history and you want to make an objection to that, I'll reconsider on a case-by-case basis. But as a general rule, I think disciplinary history is relevant.

MR. EDWARDS: There is one other matter I'd like to address before we get started. I have placed before you and also given a copy to my opposing counsel of a booklet of exhibits that we intend to rely on. I would like to know if -- I would like to ask that they be admitted into evidence.

I would also indicate that the Department

11

has entered -- they've got a couple of exhibits. I think they have Exhibits A through D that they had as part of their prehearing brief. We have no objection to them being considered into evidence, either.

HEARING OFFICER: Okay. So the exhibits attached to the Department's prehearing brief you've stipulated to.

MR. EDWARDS: Yes.

HEARING OFFICER: Mr. Godfrey, will you stipulate to the admission of their exhibits?

MR. GODFREY: I'd like to hold off and see how they're presented in the context of the evidence, your Honor. I don't see that I will have any objection to any of them, other than a few that I think are irrelevant. But I'd like to have the opportunity to --

HEARING OFFICER: You'd like to do it on a case-by-case basis. Okay, that's fine. Thank you.

All right. Mr. Edwards, I believe it's your --

MR. EDWARDS: I will call Fire Chief Stone as my first witness.

(The witness was sworn.)

MR. EDWARDS: It might be easier for everyone, especially me, to keep the mask off. I'm

12

in allergy season and I can barely hear anything as it is. Everything in my head is swollen.

DANE STONE,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. Chief Stone, could you give us your full name and spell your last name for the court reporter, please.

A. Dane Stone, S-t-o-n-e.

Q. And your current position is what?

A. Fire chief.

Q. How long have you been fire chief?

A. Five months.

Q. What did you do before you were the fire chief?

A. I was the deputy fire chief.

Q. How long did you do that?

A. Nine years.

Q. How long have you been in the public service in the -- in any fire department?

A. In total, I've been here 28 years.

Q. When you say "here," you've been with --

A. Yes. I was --

13

Q. -- which agencies?
A. I'm sorry. I was with South Davis Fire District from 1993 until 1990 -- or, excuse me -- until 2005. And then South Davis and Bountiful City Fire Departments merged and created South Davis Metro in 2005.
Q. What was your position when you first came to work with the combined, the consolidated fire departments?
A. I was a lieutenant when we combined, and then they made us all captains, so fire officer.
Q. Okay. Have you ever been disciplined as an employee of any fire department?
A. Yes, sir, I have.
Q. What kind of discipline have you had?
A. I've had a written warning -- or written reprimand. Excuse me.
Q. Is that all?
A. That I'm aware of.
Q. There was just one?
A. Yes, sir.
Q. Do you know when that was?
A. I want to say it was 2000 -- I would say 2006, maybe.
Q. So it was after the consolidation?

14

A. Yes, sir.
Q. And the position that you held when you received the written reprimand was what?
A. Captain.
Q. Did you appeal that written reprimand at all?
A. I did not.
Q. Have you ever received a verbal warning in any of your fire service?
A. Not that I'm aware of or that I can remember.
Q. I notice something in the files here, and I'm not sure what it means. It's either PJP or PIP. Does that make any sense to you? Do you have any idea what that means?
A. PIP.
Q. What is that?
A. That's a personal improvement plan.
Q. Personal improvement --
A. Plan.
Q. -- plan. Is that considered a form of discipline?
A. No.
Q. Is it considered a form of corrective action?

15

A. It's -- yes. It's considered after some corrective action to help that employee improve their -- whatever they did and then put them back on track.
Q. When I talk about discipline, let's make sure that we've got our terms correct. Is a verbal warning a form of discipline?
A. Yes.
Q. A written reprimand would be a form of discipline?
A. Yes.
Q. PIP would not be?
A. PIP would be part of discipline.
Q. Okay. A suspension would be discipline?
A. Yes, sir.
Q. A demotion?
A. Yes, sir.
Q. And termination would be a form of discipline?
A. Yes.
Q. All right. Have you ever been a direct supervisor over Gary Schvaneveldt?
A. I have not.
Q. Other than this instance, have you ever been involved in discipline of Gary Schvaneveldt?

16

A. Yes.
Q. Tell me about that.
A. The most recent that I remember was in 2000 -- late 2018, 2019. I was -- I sat in on a meeting with Mr. Schvaneveldt; his captain at the time, Captain Lane Price; Deputy Chief Dave Powers; and deputy chief -- excuse me -- Battalion Chief Greg Stewart. And just sat in part of the disciplinary -- the discussion between them.
Q. Do you know what that discipline was about?
A. Not having it in front of me, but it was -- I couldn't say everything that was in there. There was a few items that were involved in that, but --
Q. But you don't recall any details?
A. I don't remember all the details in it. I believe one was not being in proper PPE. Not --
Q. Explain what you mean by that.
A. Excuse me. Not being in the proper protective equipment on a call, on an incident. But I don't recollect exactly what everything was in that -- on that meeting.
Q. Did you consider that discipline when you were meting out the discipline that you did here, the

17

termination? The instance that you were talking about, the one in 2018 where you sat in on a meeting, did that factor in at all to making the determination as to whether Gary Schvaneveldt should be terminated?

A. It was part of his employee record that I looked at, yes.

Q. Okay. So you did consider that?

A. I considered his entire record.

Q. The 2018 instance, did he receive some sort of discipline?

A. I believe he did.

Q. All right. I'd like you to look at Exhibit No. 20.

A. I'm going to grab my glasses.

Q. Okay. Sure.

Do you have that in front of you?

A. I do, yes.

Q. I'd like you to look at 103.3 at the very bottom of the first page.

"The Fire Chief shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws."

Do you understand that to be your

18

authority?

A. I do.

Q. You've read this policy before?

A. I have.

Q. Did you read it before you became fire chief?

A. I have read it before I became fire chief, yes.

Q. Have you received training on the policy manual in general, and on this policy in particular?

A. We are -- the policies come out; we read them. If we have a discussion on them -- or we have any issues with them, we discuss that before the policies are issued out. So I have read the policy, and I have not -- we don't train on each policy, so I can't say that I've had training on the policy. We acknowledge that we understand the policy.

Q. Do you understand this policy to mean that as fire chief, basically the buck stops with you when it gets to making sure that the policies and procedures of the department are complied with by the employees of the department?

A. I do.

Q. On January 5th, 2021, you sent a Notice of Pre-Disciplinary Hearing to -- I'm going to call him

19

Gary; because, frankly, if I keep calling him Mr. Schvaneveldt, it's probably going to get stuck in my throat -- to Gary. That would be Exhibit No. 1. Is that correct?

A. Yes, sir.

Q. And you did that in your capacity as fire chief, correct?

A. I did.

Q. Now, did you review the requirements of the policy manual with regard to your obligations to make sure that the policy manual was complied with before you sent this letter, this Notice of Pre-Disciplinary Hearing, Exhibit 1?

A. I did.

Q. What did you review?

A. We reviewed the -- myself and Chief Powers, who is the administrative deputy chief, reviewed the policies under the disciplinary hearing, what they -- what we needed to do to make sure that we were correct in issuing this pre-disciplinary hearing.

Q. Is that policy No. 1017, do you know?

A. That is the corrective action policy, and I don't know if you have it in here.

Q. Well, I'd like you to look at Exhibit 3

20

and tell me if that's the policy that you reviewed.

A. That's correct.

Q. Okay. Did you review anything else besides Policy 1017 before you sent off this letter?

A. I believe it's the -- sorry. We obviously have a lot of policies. I'm trying to make sure which one I had my -- the -- it's not the personnel policies, it's --

Q. Well, let's look at Exhibit No. 21, and tell me if that's one that you looked at. Policy 1016, Personnel Complaints.

A. Personnel Complaints, yes, sir. 1016 and 1017. I thought it was 1015. 1016 and 1017.

Q. Okay. And then did you also review the disciplinary matrix that is attached to --

A. That is attached to the -- yes. It's not a policy, it's an attachment.

Q. All right. I want you to reference that. That's Exhibit No. 2. And I'm sorry I'm having you jump around, but we'll be doing a lot of that today.

Is that -- you also reviewed that?

A. Policy matrix, yes.

Q. Was there anything else you reviewed before you sent off the Notice of Pre-Disciplinary Hearing?

21

A. Not that I'm aware of.
Q. Who did you confer with before you sent off the Notice of Pre-Disciplinary Hearing?
A. Deputy Chief Powers and Deputy Chief Stewart. And also --
Q. And the other one is who?
A. Deputy Chief Stewart.
Q. Stewart.
A. Greg Stewart.
Q. All right. Did you review anything with the department's lawyers before you sent this out?
A. Correct. And our attorney.
Q. Who did you talk to?
A. Mr. Godfrey.
Q. What did you tell your lawyers with regard to this upcoming --
MR. GODFREY: Objection, your Honor. He's asking for privileged communication. It's not appropriate.
MR. EDWARDS: I believe that asking him what it is that he told his lawyers doesn't necessarily go within the privilege.
MR. GODFREY: I think it's squarely within it.
MR. EDWARDS: You know, I'm going to

22

withdraw it. I'll withdraw it.
HEARING OFFICER: Okay. I was going to -- okay, that sounds good to me.
Q. (By Mr. Edwards) How long did you talk to the lawyers?
A. I don't remember how long the conversation was.
Q. Five minutes? Ten minutes? An hour?
A. I doubt -- it was probably maybe 15 minutes, 20 minutes.
Q. Now, in the Notice of Pre-Disciplinary Hearing you asked Gary to respond to I think it was six items -- seven items. Is that correct?
A. That is correct.
Q. Were there any other items that you requested that Gary respond to in the pre-disciplinary hearing?
A. No.
Q. And it was going to be on the basis of these seven items that you were going to either issue discipline or not. Is that correct?
A. Well, those were part of it. But the --
Q. What were the other parts?
A. Well, we also take into consideration his file and the other disciplinary actions that has

23

happened to him over these years.
Q. Did you ask him to respond to anything in his file?
A. We didn't need to. Those were already taken care of.
Q. Did you ever provide a copy of the file to Mr. Schvaneveldt so that he could respond to those as part of the disciplinary proceedings?
A. Had he asked, we would given it to him.
Q. You gave that to him?
A. He did not ask for it. We did not give it to him. It's his file.
Q. I understand. So you were anticipating that you would be disciplining him with regard to matters that you found in his personnel file, but you did not ask him to respond specifically to items in his personnel file other than what's in Exhibit 1. Is that correct?
A. We were looking for him to respond to these seven.
Q. Okay. And you also did not provide him with a copy of the personnel file that would factor into his discipline, correct?
A. We did not, no.
Q. Okay. I'd like to look at -- I think it's

24

the -- page 4 of the Notice of Pre-Disciplinary Hearing, Exhibit 1.
A. Not Exhibit 4 -- page 4?
Q. Yeah, I'm sorry. Page 4 of Exhibit 1. The third paragraph down: "Pre-disciplinary Hearings are required by federal and state law whenever a government employer seeks disciplinary action of more than two days without pay, demotion, or termination."
Where did you get that information from?
A. That is from our policies, which are best practices.
Q. Okay. Did you anticipate at the time that you sent the Notice of Pre-Disciplinary Hearing that a disciplinary action of more than two days without pay or demotion or termination was anticipated?
A. That is why we do a pre-disciplinary hearing.
Q. You anticipated that it could be possibly --
A. Could be possibly.
Q. -- one of those? All right.
I'd like you to look at this Exhibit 1 and tell me if you have any indication there as to which particular action, which particular of these allegations, these seven allegations you considered

25

worthy of disciplinary action of more than two days without pay or demotion or termination.

A. Which one out of the seven I considered the one to be worst?

Q. Or any of them or all of them.

A. All seven.

Q. So you considered all seven to be all sort of one allegation, and they were seven sub-allegations?

A. No. All together, seven different ones, but combined.

Q. Okay. So you were going to combine the seven in order to determine whether it was appropriate for disciplinary action of more than two days without pay, demotion, or termination. Correct?

A. I was looking at them in totality.

Q. Okay. Did you indicate that in the letter?

A. I haven't read the letter, so --

Q. Go ahead and read it.

A. What was the question, again, Mr. Edwards?

Q. The question was did you indicate in the letter that you were planning on using these in a compound or --

A. I don't see that in the letter, no.

26

Q. Okay. Did you indicate in the letter that you were going to consider them separately?

A. I don't see that as well.

Q. Okay. So even though you were going to consider them in total, you did not give any indication to Mr. Schvaneveldt that you would be considering them in total. Correct?

A. They -- all of them together, I wanted him to respond to all -- each of them individually, but looking at them all together.

Q. That wasn't my question. My question was you did not indicate to Mr. Schvaneveldt that you were going to be considering them in total, even though you were going to be considering them in total. Is that correct?

A. It's not written there, no.

Q. Okay. You also have attached to this letter -- I think it's at the end. Yeah, it's the last page, page 19. Exhibit E, it says at the top. "Previous Corrective Action," and we've got ten matters there, the earliest of which was January 23rd, 2006, the latest of which was February 25th, 2018.

Did you anticipate that Mr. Schvaneveldt would be required to respond in any way to any of these matters?

27

A. Just on the -- if you look at the last page of the pre-disciplinary here, it says: "The evidence of these allegations along with your previous performance history are attached as Exhibits A through E." So he was given that, which shows to me that he should have known that this stuff would have been brought into his -- it was informed to him.

Q. So it's an indication to you -- can you find anywhere in this letter that indicates that he is expected to respond in some way to Exhibit E?

A. I don't see in the letter that it says that specifically.

Q. Okay. And did you make available to him any information upon which any of these ten items were based?

A. Had he asked, we would have.

Q. You didn't -- and you didn't send it, though, originally?

A. No. Just the Exhibit E was sent to him.

Q. Okay. So let me make sure I understand this. You expected that he would have to somehow respond to these ten items, but you did not give him any information with regard to those ten items other than listing them in Exhibit E. Is that correct?

28

A. Those Exhibits E were given to him. He was not -- he didn't ask to have any of those, and they were all finalized.

Q. When you say "finalized," he had already paid the price for each of these, hadn't he?

A. No. Well, he had paid the price for them, but he had never grievanced or anything with them. So he had -- these were done for him, as far as he thought.

Q. They were over, correct?

A. No, they weren't over as far as the -- the punishment had happened for them, but they were included into his -- which shows that on his last page.

Q. He had been disciplined for these ten items prior to you sending this, correct?

A. Correct.

Q. Okay. And you did not send him anything regarding the record on these particular items?

A. No.

Q. Okay. Do you discipline someone twice for the same violation of policies and procedures?

A. Would I discipline somebody twice for the same policy --

Q. Yes.

29

A. Yes.
Q. Really? Wouldn't that implicate some sort of double jeopardy where you have -- well, no. Let me ask that again. Would you discipline somebody twice for one instance of a violation of policies and procedures?
A. I'm not sure if I know what you're trying to --
Q. All right. Well, let's go to Exhibit E again at the end. January 23rd, 2006 at the very bottom, he received a verbal warning for sleeping and failure to check equipment. Do you see that?
A. January 23rd, 2006?
Q. Yeah.
A. Yes.
Q. Would it be fair to give him something in addition to a verbal warning back in 2006 in 2021 for the same violation here?
A. If he was -- if he was caught doing it again.
Q. I understand if he was caught doing it again. My question is would it be fair to discipline him for this particular violation in 2021 if he had already received discipline in 2006?
A. Yes.

30

Q. So --
A. If he was disciplined in 2006 for sleeping and he was caught in 2021 for sleeping, we would not -- are you saying we wouldn't discipline him?
Q. You're misunderstanding my question, or perhaps I need to be clearer. In 2006 he was given a verbal warning for sleeping and failure to check equipment. Would it be fair in 2021 to discipline him again for sleeping and failing to check equipment on January 23rd, 2006?
A. Yes.
Q. Okay. It would be fair for you to discipline him twice for the same instance of violation of the policies and procedures?
A. Yes.
Q. Okay. I'd like to look at Exhibit No. 3, Policy 1017. Look at page 2 under 1017.3, "Determining the Proper Corrective Action." You did review this before you issued discipline, correct?
A. Yes.
Q. Okay. "After an incident or complaint has been thoroughly investigated and the need for Corrective Action determined, a decision concerning the action that would be most effective must be made. The factors to be considered in making these

31

decisions are," No. 1, Seriousness of the offense; No. 2, the member's past history with the Department; No. 3, past practice of the Department in dealing with similar offenses"; and then it refers to the Department Discipline Matrix.
In issuing discipline to Gary Schvaneveldt, did you consider past practice of the Department in dealing with similar offenses that he had been accused of?
A. Yes.
Q. Did you look at particular instances?
A. With Gary?
Q. No. When we're looking at past practices of the Department in dealing with similar offenses, you try to do this across the board, right?
A. Yes. I see what you're saying.
Q. Yeah. I mean, you try to be consistent. In fact, isn't the next line here, "Consistency is critical to any Corrective Action system"? So when you looked at the allegations that you made against Gary in the Notice of Pre-Disciplinary Hearing, did you consider other instances, for example, in failing to wear a proper uniform that had nothing to do with him but had to do with other members of the department?

32

A. I -- I spoke with Deputy Chief Powers to make sure that we were consistent with what we were doing with other people.
Q. Did you personally look at any files of any other employee that had been disciplined for the very same violations of policy that you claim that Gary Schvaneveldt had violated?
A. No.
Q. Do you know if Chief Powers did that?
A. I do not.
Q. Did you look at how many instances of discipline had been issued to anyone else in the department for the matters that you were accusing Mr. Schvaneveldt of that were listed in the Notice of Pre-Disciplinary Hearing?
A. Not personally, no.
Q. Do you know if anyone did?
A. Chief Powers, I'm assuming. I don't know.
Q. Well, we'll get him up here.
Now, have you had a chance to review the preappellate brief that your counsel has filed in this matter?
A. I did, yes.
Q. He stated, "The incidents each taken alone would not justify termination. However, when viewed

33

in sum and in succession, they resulted in a recommendation for significant discipline from Mr. Schvaneveldt's captains."

Do you agree with that statement?

A. I do.

Q. Your counsel also indicated, quote, "The Department does not have and command staff cannot recall any employee with a disciplinary history as long and significant as Mr. Schvaneveldt's."

Do you agree with that statement?

A. Yes.

Q. Who else did you look at? Who else's files did you look at to determine whether there was an employee with a disciplinary history as long and significant as Mr. Schvaneveldt's?

A. I didn't look at any personnel files. The last time I was in the files that had all the personnel departments in it, I didn't look at any individual -- Gary's is the thickest. So I did not look at --

Q. So you --

A. I did not look at the individual file from every employee.

Q. So you based it on the thickness of the file?

34

A. And what I've seen of Gary's file compared to others.

Q. Okay. Well, let's break that down. The thickness of the file; and what was the other factor that you just mentioned? What you know of Gary's --

A. What I know of Gary's file.

Q. And tell me what you know of Gary's file and how you know that.

A. Because I reviewed Gary's file in this determination.

Q. But you did not review any other individual file when it came down to making a determination as to whether he should be terminated. Is that correct?

A. That is correct.

Q. What went into the determination to fire Gary?

A. The determination to fire Gary was his demeanor at the pre-disciplinary hearing. He did not -- for me, he did not take any responsibility for any of his actions. And then I looked at the amount of discipline that he has had over the years since 2006, and the behavior has not changed with all the discipline that has happened to Mr. Schvaneveldt.

Q. Do you think it's proper to discipline

35

somebody based on their demeanor?

A. No.

Q. Do you think it's proper to discipline somebody because they have a personality conflict with other people in this department?

A. No.

Q. You're aware that other people do have conflicts, correct?

A. Absolutely.

Q. Do you discipline people for that?

A. For a conflict?

Q. Yeah, for having a conflict, personality conflict with somebody.

A. No.

Q. How big is this department?

A. As far as personnel? Or --

Q. Yeah.

A. Ninety-seven.

Q. And is that all firefighters and captains and battalion chiefs, or does that include --

A. No. That would include all the admin staff.

Q. Okay. If you've got 97 people, you're bound to have some sort of personality conflicts, correct?

36

A. Absolutely.

Q. Do you ever play favorites with regard to when there is conflict?

A. No.

Q. There are certain people in the department that you get along with better than others, correct?

A. Sure.

Q. But you show no favoritism toward them, correct?

A. I don't believe I do.

Q. Does anybody, to your knowledge?

A. Not to my knowledge.

Q. Did you talk to chief -- is it Deputy Chief or Assistant Chief Powers?

A. Deputy.

Q. Did you talk to Deputy Chief Powers when it came to the determination to discipline Gary?

A. Yes.

Q. Anybody else that you talked to?

A. Deputy Chief Greg Stewart and our attorney, Mr. Godfrey.

Q. Did you talk to Mr. Godfrey between the time of the pre-disciplinary hearing and the time that you issued the letter of termination?

A. Yes.

37

Q. How long did you talk to him under those circumstances?
A. I don't recall the amount of time, Mr. Edwards.
Q. Can you even estimate? Five minutes? Ten minutes? An hour and a half?
A. I would say maybe 30 minutes.
Q. How many hours did you spend in making a determination after the pre-disciplinary hearing to fire Gary Schvaneveldt?
A. On duty or off duty?
Q. Anytime.
A. I would say up until the -- the time -- from the pre-disciplinary hearing up until the time we sent the letter, which the letter was sent out -- when was the letter sent out? I'm trying to --
Q. Let's see. I think you will find that as No. 6. That was January 26, 2021.
A. So 20 days before I sent that letter. So January 5th to January 26th, 21 days.
Q. You spent 24 hours a day?
A. Not 24 hours a day, but I spent every day thinking about it, yes. I have other options -- or other obligations as well, so I was thinking of those too. But this was not an easy --

38

Q. I imagine you probably had to sleep during that time as well.
A. This was not an easy decision.
Q. How many years of service does Gary have with the department?
A. I believe 18.
Q. Eighteen years of service. Actually, it's about 18 and a half, isn't it?
A. I'm not exactly sure on his -- what month he came into the service.
Q. He was about 18 months out from being able to get a 20-year retirement. Do you understand that?
A. I do.
Q. Were you aware that before he came on full time, that he was working part time for the Department as well?
A. I do remember him working for Bountiful Fire Department part time.
Q. Were you aware that an offer was made to me to indicate to Mr. Schvaneveldt that he could resign in lieu of termination, and that that was later revoked?
A. I was aware that the offer was made of resignation.
Q. Were you aware that it was revoked?

39

A. I don't -- don't recall it was ever revoked.
Q. I'd like to look at Exhibit 3 again, 1017. Let's look at page 1. Under 1017.2, "It is the policy of the Department that supervisors administer Corrective Action in a corrective, progressive, and lawful manner." And there at the bottom -- well, we've got the reference to corrective and then one to progressive, and then we have lawful.
"Lawful in that the Department will provide due process rights whereby employees are given reasonable notice and an opportunity for the employee to respond to allegations," and then references "see Policy 1016."
Do you understand that it is Policy 1016 that provides due process rights to an employee?
A. Yes.
Q. Let's look at No. 1016. That is Exhibit No. 21. Would you agree that it is vital that the Department follow the procedures in Policy 1016 in order to provide due process rights to its employees?
MR. GODFREY: Objection. He's asking for a legal conclusion.
MR. EDWARDS: I'm asking his opinion.
HEARING OFFICER: Would you rephrase or

40

repeat the question?
MR. EDWARDS: Well -- all right.
Q. (By Mr. Edwards) Policy 1017 says that -- it's No. 3 again -- "The Department will provide Due Process rights whereby employees are given reasonable notice and an opportunity for the employee to respond to allegations."
Does that have a meaning to you?
HEARING OFFICER: That's -- I'm going to allow that question.
THE WITNESS: Yes.
Q. (By Mr. Edwards) What meaning is that?
A. The employee has an opportunity to respond to allegations made.
Q. The reference there to Policy 1016, do you understand that to mean that the Department needs to follow the policies in 1016 in order to provide due process rights to its employees?
MR. GODFREY: Renew the objection again. It's calling for a legal conclusion.
MR. EDWARDS: I'm asking his opinion.
HEARING OFFICER: I think he can state his opinion, so I'll overrule that.
THE WITNESS: So ask the question again for me, please, Mr. Edwards.

41

MR. EDWARDS: Let's read it back.
(The record was read as follows: "The reference there to Policy 1016, do you understand that to mean that the Department needs to follow the policies in 1016 in order to provide due process rights to its employees?")
THE WITNESS: I believe it is important to follow the policies.
Q. (By Mr. Edwards) It's important to follow them?
A. That's my opinion.
Q. I understand. Are you aware of anyone who has ever been disciplined for a violation of Policy 1016?
A. Not right off the -- other than Mr. Schvaneveldt. Oh, excuse me -- of 1016. No, sorry. Not that I know of. Sorry.
Q. You say it's important that you follow it. Is this a policy that if it is not followed could result in discipline?
A. Yes.
Q. But to your knowledge, no one has ever been disciplined for a violation of Policy 1016?
A. Not that I know of.
Q. All right. Did you review Policy 1016

42

before you issued the pre -- let me try that again -- Exhibit 1, the Notice of Pre-Disciplinary Hearing?
A. Yes.
Q. Did you review policy -- and I think you said you reviewed Policy 1017?
A. Yes, sir.
Q. Did you also review Policy 103?
A. I'm sorry. What's Policy 103?
Q. Sorry about that. It's No. 20.
A. Yes, I did.
Q. I'd like to look back at Exhibit 21, Policy 1016. Policy 1016.2: "The Department takes seriously all complaints regarding service provided by the Department and the conduct of its members. The Department will accept and address all complaints of member misconduct in accordance with this policy and applicable federal, state, and local law."
Do you understand that to be mandatory, that the Department accept and address all complaints of member misconduct in accordance with this Policy 1016 and the applicable federal, state, and local law?
A. To follow the policy, yes.
Q. Okay. So the answer to my last question is yes, it is your understanding that this is

43

mandatory for the department to follow this Policy 1016?
A. Policies or best procedures.
Q. Okay. So yes, it is mandatory?
A. It is the policy that we follow.
Q. Let's go back No. 20 here. Let's look at the third page of No. 20 -- fourth page. I'm sorry. Says at the bottom Policy Manual, page 12.
There are certain phrases and words that are given with regard to the policies and procedures of the Department. No. 3 down: "Shall or will -- indicates a mandatory action." Do you read that?
A. Yes, I do.
Q. So if we find the word that says that the department "will" accept and address all complaints of member misconduct in accordance with this policy, you understand that to be --
A. Mandatory.
Q. -- mandatory?
A. Yes.
Q. All right. I'd like to look at 1016.4.2, Sources of Complaints. "Members of the public may make complaints. (B), any department member becoming aware of alleged misconduct shall immediately notify a supervisor."

44

"Will" or "shall" is mandatory, correct?
A. Yes.
Q. So if a department member becomes aware of alleged misconduct, he's required under this policy to immediately notify a supervisor, correct?
A. That is the hope.
Q. Well, it's mandatory under the policies, isn't it?
A. Yes.
Q. Okay. So whether it's a hope not, that's something that you're supposed to --
A. We hope they do it, because it's mandatory.
Q. Okay. (C), "Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging the misconduct of a member that, if true, could result in disciplinary action."
Now, in this case we know that there's disciplinary action that is being considered, correct?
A. Correct.
Q. Let's look at 1016.5.
"Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of

45

the complaint is defined as clearly as possible."
I picked this up today, South Davis Fire Department Complaint Record Form. Is that the form you use?
A. For complaints --
Q. Yes.
A. -- towards personnel? Or just complaints?
Q. Any kind of complaint.
A. Is that the -- it's the one, okay. I just didn't know -- I can't see that, so --
Q. I can give it to you.
A. Thank you. Yes.
Q. I have looked in vain through Mr. Schvaneveldt's files to find this complaint form anywhere. Is there one somewhere that I haven't seen?
A. Not that I've seen.
Q. So there was a violation at least of that particular policy, correct, with regard to making a complaint against Mr. Schvaneveldt?
MR. GODFREY: Objection. He's asking for a conclusion. It's legal, a violation of a policy.
HEARING OFFICER: I'm going to overrule that. I think he can give his opinion as to what's a violation and what's not, without making a legal

46

conclusion.
THE WITNESS: The complaint form is there to help the supervisor or the member make the complaint. But they have other avenues to make those through our -- our tracking system or our performance program.
Q. (By Mr. Edwards) So this is only one way that you can make a complaint against a fellow employee, is that correct, the complaint form?
A. Yes.
Q. And another way to make a complaint would be a notation in the Trakstar system? Is that your understanding?
A. Correct.
Q. All right. So when it says here that "Supervisors shall ensure that all formal and informal complaints are documented on a complaint form," you understand that to mean it can be this form or the Trakstar system. Correct?
A. Correct.
Q. Do you consider the Trakstar system to be a form of complaint?
A. It's not a form of complaint. It's a -- it's a tool that you utilize to keep track of our employees and their performance.

47

Q. I see. 1016.5, again, looking at Exhibit 21. "All complaints and inquiries should be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint."
Do you have separate log other than the Trakstar system that records and tracks complaints?
A. No.
Q. That's the only log you have?
A. Yes.
Q. And do you consider that the Trakstar system log complies with this particular policy requirement?
A. Yes. Yes.
Q. Okay. I'd like to look at 1016.1. "This policy provides guidelines for reporting, investigation and disposition of complaints regarding the conduct of members of this department and the service provided by this department."
Are you aware that Policy 106 states that if a complaint against a member is the member's supervisor, that that supervisor should not -- well, shall not undertake the investigation of the complaint?

48

A. Yes.
Q. But that, instead, another supervisor must investigate, presumably in order to protect the objectivity of the investigation?
A. Yes.
Q. Now, the complaints that were made in the Trakstar system with regard to Gary Schvaneveldt all came from supervisors. Isn't that correct?
A. Yes.
Q. How many of them were independently investigated by a non-supervisor?
A. They were witnessed by the supervisor.
Q. Well, the complaint was actually made by supervisors, correct?
A. Correct, because they were witnessed by the supervisor.
Q. But they were not investigated by a non-supervisor, were they?
A. They didn't need to be investigated by a non-supervisor.
Q. So the answer to my question is no?
A. No.
Q. Are you aware that under Policy 106 when an investigator is appointed -- now, there were no investigators appointed here, correct? No

49

independent investigators appointed?
A. Independent as in other supervisors?
Q. As a non-complaining supervisor.
A. Correct.
Q. When that occurs, are you aware that under Policy 106 that an independent supervisor, quote, "should respond to all complaints in a courteous and professional manner"?
A. Yes.
Q. Are you aware that in the Trakstar notes with regard to Gary's case, there was a note from -- I believe it's Captain Shafto? Paramedic Shafto -- indicating twice that Gary was behaving like a toddler?
A. Yes.
Q. Are you aware that he stated that "Gary is a management nightmare, and I hope that I never have to experience another employee like him in my career"?
A. Yes.
Q. Are you aware that he stated that Gary is, quote, "a deceitful, insubordinate employee that is a management and energy drain for anybody associated with him and," quote, "a management vacuum"?
A. Yes.

50

Q. Did you consider that to be a courteous and professional manner of investigating any complaint against Gary?
A. I consider that to be his opinion on what he thought how it was that -- to be around Gary.
Q. Okay. I'm going to try that question again. Did you consider that to be a courteous and professional manner of investigating a complaint?
A. He wasn't investigating the complaint.
Q. Of course he wasn't, because he was making the complaint. Correct?
A. Correct.
Q. And there was no independent investigation, correct?
A. Didn't need to be.
Q. There didn't need to be an investigation because --
A. He wasn't --
Q. -- the supervisor who made the complaint was judge and jury here, correct?
A. The supervisor witnessed the policy -- excuse me -- the -- the supervisor, Mr. Shafto, firefighter Paramedic Shafto, witnessed the infraction, made the complaint off that infraction. It was witnessed by him. There was no investigation

51

because there didn't need to be an investigation into it because it wasn't two people complaining.
Q. So anytime any supervisor, for whatever reason, decides to make a complaint against another person, there doesn't need to be any independent investigation because you take the word of the supervisor who is making the complaint. Correct?
A. If it is witnessed by more than one people -- or, excuse me. If the supervisor witnesses the policy infraction, that's the complaint. The investigation is done. They reach out to the administration deputy chief, Chief Powers, and discuss it, and then -- and then determine the proper disciplinary action to occur.
Q. That didn't really answer my question. I'm going to try it again.
So, as I understand it -- and you can tell me if I'm incorrect -- if a supervisor makes a complaint against somebody that he is supervising, there doesn't need to be any kind of a -- an independent supervisor to review that complaint, because the initiating supervisor has made the complaint, and that's all you need. Is that correct?
A. I believe that depends on the -- what the complaint is about.

52

Q. Where in the policy does it say that it depends on what the complaint is about as to whether you have to have an independent supervisor look at what the complaining supervisor has done?
A. So every -- every -- when --
Q. I'm going to ask that you answer the question. Where in the policy does it say that?
A. I don't see it. I don't see it.
Q. It's not there.
A. Just -- you don't have to --
Q. Let's suppose that a supervisor just doesn't like somebody that he's supervising and he makes a complaint that is entirely inappropriate, unfounded, and wrong. Would you look to an independent supervisor under those circumstances?
A. Yes.
Q. How do you make the determination as to whether a complaint that was made by a supervisor is made with bad intent or with good intent?
A. I think you can look at a person's history to determine that.
Q. Whose history? The supervisor's history or the other --
A. Both.
Q. -- person's history?

53

A. Both.
Q. If there is bias on the part of the supervisor, does that look into consideration -- does that -- let me try that again. If the supervisor evidences bias against the person that he is supervising and makes a complaint, what do you do about that?
A. If the supervisor has a bias against a person, what do we do about that?
Q. With regard to the complaint that is made by a supervisor.
A. During the investigation, if we came across that, then that supervisor could be disciplined for that.
Q. Did you ever discipline Paramedic Shafto with regard to making a complaint against Gary Schvaneveldt?
A. No.
Q. Despite the fact that he said twice that Gary was behaving like a toddler, that he was a management nightmare, that he hoped he never had to experience another employee like him in his career, that he was a deceitful, insubordinate employee who was a management and energy drain, do you see that as evidencing any kind of bias at all?

54

A. No.
Q. I see. Are you aware that in the Trakstar notes Captain Maxwell indicated in a note of December 5th, 2020, "I felt as though I was trying to motivate my nine-year-old son, not a grown adult," and said again, "it was like trying to manage a nine-year-old boy not and a grown adult with 18 years in the fire service." Did you see that --
A. Yes.
Q. -- as evidencing any kind of bias on Captain Maxwell's part?
A. No.
Q. And as a result, you didn't think that it was necessary that there be an independent investigator to look at that particular complaint that was made by Captain Maxwell. Correct?
A. Chief Powers spoke with both of those individuals. And so, no, we did not do an independent investigation.
Q. All right. Let's look at 1016.6.2, the investigation procedures.
A. I'm sorry, Mr. Edwards. What did you say? Which one?
Q. We're in Exhibit 21. At the bottom it says page 144. It's 1016.6.2.

55

A. Yeah. Okay.
Q. "The following procedures should be followed with regard to any accused member subject to investigation by the Department."
Do you see this as mandatory?
A. Should, not shall. The following procedures should be followed."
Q. Okay. Let's look back to Policy 103, Exhibit 20. This is the fourth page. At the bottom it says page 12. Fourth line down, "Should -- indicates a generally required or expected action absent a rational basis for failing to conform."
Do you understand that to be the case?
A. I do.
Q. All right. So when it says that these following procedures should be followed, that means that it would be generally required and expected, unless there's a rational basis for failing to conform. Correct?
A. Correct.
Q. All right. Now, was there any process at all to the investigation of the allegations that were made against Gary in the Notice of Pre-Disciplinary Hearing?
A. Were there any investigations involved in

56

Gary's pre-disciplinary hearing?
Q. Were there any investigations with regard to the allegations that were made in the Notice of Pre-Disciplinary Hearing?
A. We looked at all those. Chief Powers and the other officers discussed those before it came to my office.
Q. So the investigation was a discussion among Chief Powers and others. And were you involved in those discussions?
A. I was not.
Q. Okay. So the investigation was a discussion among Chief Powers --
A. I can't say, because I was not part of those. But I'm saying that those -- those happen before they get to me.
Q. All right. Let's look at 1016.6.2. There's a whole list of things here that should be done.
"Prior to any interview, the member should be informed of the nature of the investigation."
Do you know whether that was ever done?
A. No.
Q. "Interviews of accused members should be conducted during reasonable work hours of the member

57

and, if the member is off duty, the member shall be compensated if required."

Do you know if he was ever interviewed?

A. I do not.

Q. Under (f), "The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview."

Do you know if there was ever any recording of any interview with Gary Schvaneveldt?

A. Not that I know of, other than the pre-disciplinary hearing.

Q. You consider the pre-disciplinary hearing to be an interview?

A. No. You said is there anything that you know with Gary that's been recorded, and I said just the pre-disciplinary hearing.

Q. No, I asked if an interview had been recorded.

A. Oh, no. Sorry. I apologize.

Q. Because you did not consider the pre-disciplinary hearing to be an interview, did you?

A. No.

58

Q. (G), "a member subjected to interviews that could result in punitive action" -- okay, wait a minute. Punitive action. Termination is punitive action, correct?

A. Correct.

Q. And that's what happened here, correct?

A. Correct.

Q. "A member subjected to interviews that could result in punitive action shall" -- mandatory again, correct?

A. Correct.

Q. "Shall have the right to have a representative of his/her choosing during any interrogation."

Do you know if Gary was ever given any option to have a representative during any interview process?

A. No.

Q. In your notice of pre-disciplinary hearing, did you indicate that he had a right to have a representative during any investigation?

A. He has a right to have -- in the pre-disciplinary hearing he has a right to have somebody there.

Q. How about during an investigation?

59

A. Right there it says it. But no, not that I'm aware.

Q. All right. And he was not afforded that, was he?

A. Not that I'm aware of.

Q. All right. I want to look at (e): "No member shall be subjected to offensive or threatening language; nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions and be subject to discipline for failing to do so."

Now, you're not aware of whether there was even an investigation done. Correct?

A. Correct.

Q. "Nothing administratively" -- oh, wait. "Nothing administratively ordered may be provided to a criminal investigator. An appropriate Garrity warning shall be issued to the member prior to initiating questioning."

Do you know what a Garrity warning is?

A. I do.

Q. Have you ever used one before?

A. No.

Q. Have you ever been subjected to one?

60

A. No.

Q. Have you ever been given one?

A. No.

Q. Have you ever given one to anybody else?

A. No.

Q. Are you aware of anybody in the employ of the Department who's ever been given a Garrity warning?

A. Yes.

Q. Who?

MR. GODFREY: That's somebody else's personnel record.

HEARING OFFICER: Yeah, I don't know why we need to know whose --

Q. (By Mr. Edwards) How many times?

A. One.

Q. One time. Was Gary given a Garrity warning?

A. Not that I'm aware of.

Q. Let's look at 1016.6.3: "Investigations of complaints should be timely, detailed, complete, and follow the format." Again, "should."

Well, go back to what the department says "should" means: "Generally required or expected, absent a rational basis for failing to conform."

61

There's a whole list here of things that should go into an investigation that should be timely, detailed, complete, and follow a format.

Was this format followed in Gary's case where there was an investigation that showed an introduction, a synopsis, a summary of allegations, evidence to each allegation, a conclusion, and exhibits?

A. If an investigation was done, I'm sure it was done.

Q. And if it was not done, it was not done, correct? If an investigation was not done, this was not done. Correct?

A. I don't know.

Q. All right. You simply don't know whether there was an investigation?

A. I wasn't part of it.

Q. Have you asked anybody in this department as to whether there was an investigation of Gary?

A. That is -- we have discussed that. I was not part of the investigation, so I don't know how the investigation was done, Mr. Edwards.

Q. Well, that isn't my question. My question is whether you have asked anyone in this department whether an investigation was done.

62

A. Into each of Gary's --

Q. Into each of the allegations that were made against Gary.

A. Yes. I have asked, and we have discussed that.

Q. And what is the answer?

A. There was no investigation done.

Q. Okay. How important is it to you that the protocol here in Section 1016 be followed?

A. If an investigation is needed, it's important or warranted.

Q. Who makes the decision as to whether an investigation is needed, in your opinion?

A. To me, the investigation is warranted or -- who determines that, the administration deputy chief or his supervisors.

Q. Where in Section 1016 does it say that, that the determination whether an investigation should be done is up to the deputy chief?

A. I could probably read through it. I'm not sure if I said that. But that investigation, if you -- it details how the investigation should be done, I know that.

Q. Doesn't 1016 say that every complaint shall be investigated?

63

MR. GODFREY: That's an incorrect statement of what the policy says. Have him read the policy.

HEARING OFFICER: I'll sustain that objection.

MR. EDWARDS: I guess we can go back to it.

Q. (By Mr. Edwards) 1016.2. "The Department will accept and address all complaints of member misconduct in accordance with this policy and applicable federal, state, and local law."

1016.3, "Personnel complaints consist of any allegation of misconduct or improper job performance by any employee that, if true, would constitute a violation of department policy or rule or federal, state, or local law."

Then we have a classification in 1016.3.1. We have informal. Now, let's talk about the allegations that were made with regard to Gary. Were they informal complaints?

A. An informal complaint is "a matter in which the member's battalion chief is satisfied that appropriate action has been taken by a supervisor of a rank greater than the accused member."

Q. Were the allegations that led to this

64

firing informal?

A. They were formal.

Q. Okay. "A matter in which a supervisor determines that further action is warranted" -- this is formal. "Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the designated department representative, depending on the seriousness and complexity of the investigation."

Doesn't that imply that any kind of a formal investigation -- any kind of formal complaint will be investigated?

MR. GODFREY: Objection. He's asking him to speculate.

MR. EDWARDS: You're right. It says what it says.

Q. (By Mr. Edwards) And I think I got from you that no one has been disciplined for deviating from following Policy 106?

A. Not that I'm aware of.

Q. Did you ever consider resigning as fire chief because you did not follow these?

A. No, sir.

Q. Let's look at Policy 1017 again. It is Exhibit 3. I'd like to look at 1017.3. "Consistency

65

is critical to any Corrective Action system." You would agree with that, correct?
A. Correct.
Q. Is it important to you that discipline be carried out uniformly?
A. Correct.
Q. That you discipline everyone fairly?
A. Correct.
Q. So you don't play favorites?
A. No.
Q. But you don't single out particular individuals for discipline for violating a rule while letting other individuals get away with violation of that same rule without discipline?
A. I do not.
Q. So if, for example, numerous employees all violated the mask mandate at the same time and on the same day, it would be improper for a captain or battalion chief or you, as a fire chief, to discipline one employee in particular for violation of a policy, but to let others go without discipline. Is that correct?
A. If everybody -- I'm not sure exactly what you're trying to ask me.
Q. Let's say you have five people at the fire

66

station; you have a mask mandate; none of them are following it. You discipline one guy but you let the others go. That would be unjust, correct?
A. Correct.
Q. And that would be in violation of this policy, correct?
A. Correct.
Q. Have you ever told a captain to write up an employee or the captain would be written up?
A. I have never done that, no.
Q. Do you know of anybody who has?
A. Not that I know of.
Q. Do you meet with your captains to make sure that they issue discipline uniformly, even among themselves?
A. Do I meet with each captain and discuss --
Q. Yeah.
A. -- discipline? We discuss in captains meeting with regards to discipline and the procedures, but not on a regular basis.
Q. Well, are you aware of any instances in which one captain will allow a violation of a policy without any discipline, and another captain would disallow it and discipline somebody for the violation of the same policy?

67

A. I'm not aware of that.
Q. That would fly in the face of the idea that discipline would be consistent, correct?
A. We would hope that it would be consistent.
Q. All right. Do you have any idea how old Gary is?
A. I believe 47, 48.
Q. Are you aware of any of the requirements of the age discrimination in employment law?
A. I am not aware of that. I don't have a great understanding of the age discrimination law. I can say that.
Q. Are you aware that there has been initiated an investigation with the Equal Employment Opportunity Commission for violations of the age discrimination employment law?
A. Yes.
Q. Did you look it up after you became aware of that?
A. I did a little bit, yes.
Q. What do you understand about that law?
A. It's 40 years or older.
Q. Okay. Are you aware of the Americans with Disabilities Act?
A. Yes.

68

Q. Are you aware that in the event that an employee is suffering from some disability that a reasonable accommodation should be made to that employee?
A. Yes.
Q. Are you aware that Gary had actually requested a different face mask than the one that was issued because he got claustrophobic?
A. I was not.
Q. Okay. I'd like you to look at Exhibit 24, please. Have you ever seen this text before?
A. Yes.
Q. What did you understand that text to mean?
A. It looks like somebody needs a bigger mask.
Q. "Question. Do these masks come in a bigger cup? I need a C cup and these fit like an A cup."
Do you understand that to mean that the person who was making that request wanted a larger mask?
A. I assume that.
Q. And the response came back, "I think one size fits most." Do you understand that?
A. Yes.

69

Q. And the date on that is somewhere around April 25th of 2020. Do you understand that?
A. The message after that says April 25th, right. So I'm not sure when that message was --
Q. I understand. Well, that's not as important as the fact -- this came in before that, then, correct?
A. It looks like that.
Q. All right. Were you aware that Gary had made a request for a larger mask?
A. I was not.
Q. Are you aware of it now?
A. If that's what you're telling me. But I don't know. That's Gary.
MR. EDWARDS: Okay. Should we take a break?
HEARING OFFICER: Sure.
MR. EDWARDS: I'm going to start on another line of questions.
MR. GODFREY: Before we break, Edwards requested that Battalion Chief Moss -- is that right? -- be here, and that Mr. Kettle be here. Both are off duty today. Both are here now. I'd like to get to their questioning as quickly as possible out of courtesy to them.

70

HEARING OFFICER: Okay. Mr. Edwards, are you --
MR. EDWARDS: I have no problem putting either of them on and then continuing with --
HEARING OFFICER: If you're amenable to that, maybe that's a good thing to do.
MR. EDWARDS: That will be fine. Let's do one or both of them right after the break, and then we can get back to Chief Stone.
HEARING OFFICER: Okay. Thanks. We'll take a ten-minute break.
(Recess from 10:27 a.m. to 10:35 a.m.)
HEARING OFFICER: Let's get back on the record.
MR. EDWARDS: Let's go ahead with Captain Kettle. I might not have that much.

DAVID KETTLE,
called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:
Q. Captain Kettle, have you been listening to the questions that I've asked of Chief Stone?
A. Just barely, yeah.
Q. Go ahead and take your mask off. We can't understand you with it on.
A. Thanks.
Q. Thank you. And your rank is captain, correct?
A. Yes, captain.
Q. Okay. How long have you been a captain?
A. Since we merged in 2005 -- 17 years.
Q. In front of you is a book.
A. Okay.
Q. I'd like you to look at Exhibit No. 1.
A. Okay.
Q. All right. You get into this thing, and it's about -- well, at the bottom of the page there's a note in the Trakstar, November 4th, 2020.
A. I don't know if I'm in the right spot.
Q. It says at the bottom in the left-hand corner page 16.
A. Page 16?
Q. Yeah.
A. Okay.
Q. All right. Under November 4th, 2020 it says: "Kettle. Late day two checks. Had to be reminded." Do you recall entering that into Trakstar?
A. I do.

71

72

Q. What was the situation?
A. I believe that day I was working an overtime shift up at Station 84. I believe it was our second day of -- or their second day of their shift. And I was asked by I believe the battalion chief if the second day had not been done yet. So when I looked, I noticed that they hadn't. So I reminded Gary that he needed to get those done.
Q. Why did you need to put that into the Trakstar system?
A. I believe that I was asked to do so.
Q. By whom?
A. I believe the battalion chief at the time.
Q. And who was the battalion chief at the time?
A. I think it was Chief Stewart.
Q. Did Chief Stewart indicate to you that if you did not, that you might be written up?
A. No.
Q. Did you consider that there was a late day two check to be some sort of serious infraction?
A. If it's habitual it is, but with me being up there part time, I did not know. But the day two checks should be done first thing in the morning, yes.

73

Q. I understand. But in this case they were late?
A. Yes.
Q. And you were asked to put that into the file by Battalion Chief Stewart, correct?
A. Yes.
MR. EDWARDS: Okay. That's all I've got.
HEARING OFFICER: Any questions?
MR. GODFREY: No.
MR. EDWARDS: You came in for two minutes of fun.
THE WITNESS: Sounds good.
HEARING OFFICER: Can we let him go?
MR. EDWARDS: Yes. The next one is Chief Moss. I'm sorry I don't have everybody's ranks down, and I know that that is important.

STEVE MOSS,
called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:
Q. You are Battalion Chief Steve Moss, correct?
A. I am.
Q. Okay. I'd like you, again, to look at

74

Exhibit No. 1. It's open to that. Go need to go back a few pages to page 8 in the lower left-hand corner. It says at the top "Exhibit B, Witness Statements," and it appears to be a memo from you to Chief Powers dated December 21st, 2020. Is that correct?
A. It is.
Q. Okay. And it's regarding a sick call off by Gary Schvaneveldt?
A. Yes, sir.
Q. Do you recall issuing this particular memo?
A. Yes.
Q. Do you recall the situation that led you to write this memo?
A. Yes, sir.
Q. Were you asked to write this memo by anyone?
A. Say that again.
Q. Were you asked to write this memo by anyone?
A. Chief Powers.
Q. Why did -- did he tell you why he wanted you to write this memo?
A. There's really no reason I need to write

75

it other than for filing reasons, for other than -- what occurred that day was obviously a policy problem.
Q. Okay. When you say it's a policy problem, what do you mean by that?
A. In other words, when Gary called off, he didn't exactly go by our policy.
Q. Now, just for those of us who are not initiated in the fire service, what do you mean by "called off"?
A. Called off sick.
Q. Okay. So he called and said, I'm going to be sick and I'm not going to be in?
A. No, sir, he did not.
Q. Oh, okay. I guess that's the problem. That's the issue?
A. Yes, sir.
Q. Okay. All right. What is the policy with regard to calling in sick?
A. The policy when you report for duty is you are to notify the captain and the battalion chief if you are unable to make your duty and report for duty for that day.
Q. Okay. And that was not complied with here?

76

A. No, it was not.
Q. How is it that you became aware of the fact that there was not compliance with that?
A. As I stated in my memo on December 20th at 1700 hours, I checked CrewSense. I too I was working a 48, and then I returned for the next day, which makes a 72 on a platoon, working for Chief Stewart. I did typically do that simply because I needed to make sure the staffing for a platoon was correct and I had everybody that I needed for the day of the 21st.
Looking at the -- looking at the staffing, I noticed that he already had inadvertently put himself off sick pay, or sick leave. At that point I did go ahead and get ahold of Chief Stewart and confirm if he had talked to Chief Stewart about that call-off for sick, and he had no idea about it.
I did text Gary shortly after that just to find out Gary's intent for calling off sick. And you'll notice in the exhibit Gary's reasons for that.
Q. Okay. You indicate here that Gary gave you a response, and he indicated there was some issue with his wife; and you responded by saying, "I get that, but it's not your place to put yourself off sick in CrewSense," and then there's three

77

exclamation points. "It's your responsibility to call or text the BC and inform them what you need. It's the policy," with two exclamation points.

Did you do anything after you received -- or after you sent that text off to Gary Schvaneveldt about this particular issue?

A. I'm not sure what you mean did I do anything else.

Q. You're right. You know what, it was a bad question. All right.

With regard to this particular instance in which you found that there was a violation of policy and you asked about it, he responded. It says you went back to staffing and made some changes to cover the open shift, and looked at comments made in CrewSense by Gary and approved his time off. Is that correct?

A. I did.

Q. So as far as you were concerned, was it -- was the issue resolved?

A. No, sir.

Q. How was it not resolved?

A. It was resolved other than I -- I confirmed his intent to call off sick and the reason. Other than that, he violated policy by not contacting

78

me with his inability to report for duty.

Q. Okay. And you were asked to send this memo from Chief Powers; is that correct?

A. Yes, sir.

Q. And how is it that he found out about it?

A. I notified him of a policy.

Q. Okay. To your knowledge, was there any kind of an investigation of this particular violation of policy?

A. No, sir.

MR. EDWARDS: Okay. That's all I've got.

CROSS-EXAMINATION

BY MR. GODFREY:

Q. When you say you're not aware of any kind of an investigation, did you discuss the matter with Deputy Chief Powers?

A. Afterwards, yes. Yes, sir, I did.

Q. And that's when you got the instruction to write this memo?

A. Yes. Yes.

Q. In your role as a battalion chief, do you supervise, you know, different shifts often?

A. Yes, sir.

Q. Have you worked with Mr. Schvaneveldt often?

79

A. In the past, yes, sir.

Q. Would you say you have relatively regular occasion to work with him?

A. To supervise?

Q. (Nods head.)

A. I've been a battalion chief for 13 years, and so I guess my answer would be yes.

Q. Have you worked with Mr. Schvaneveldt enough to form an opinion about generally his compliance with department policies and procedures?

MR. EDWARDS: I'm going to object unless there is some relationship between these questions and what it is that my client was fired for. We seem to be going into some sort of questioning about reputation or attitude or something like that, which is -- if it's not based -- if that's not basis for his firing, I object to it as being irrelevant and prejudicial.

MR. GODFREY: His conduct over the course of his employment is a basis for his termination. It's all relevant.

HEARING OFFICER: Yeah, I agree. His conduct over his course of employment is relevant, and I'll overrule that objection.

Q. (By Mr. Godfrey) So I'll ask you again,

80

have you worked with him enough to be able to form an opinion as to his general compliance with the policies and procedures of the department?

A. Yes.

Q. Did Gary routinely comply with policies and procedures of the department?

A. Negative. Sorry -- no.

Q. Did you find him difficult to supervise?

A. Yes, sir.

Q. Did you ever have occasion to write Gary up in the past?

A. Yes, I did.

Q. Do you recall what you had to write him up for?

A. Keep in mind I go back a long way with Gary, and for me to recall every time I probably could have -- my -- I did not. But I've supervised Gary over the years, and he's given me a lot of reason to do that by being just plain defiant.

MR. GODFREY: I don't have any further questions for Battalion Chief Moss.

MR. EDWARDS: Oh, I do.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q. In answer to Mr. Godfrey's question, you

81

said "negative" when you were asked if Gary routinely complied with the policies and procedures of the department. Is that correct? You said "negative." You said no.

A. No.

Q. I'd better clarify that. The answer to the question is no; isn't that correct?

A. Yes, sir.

Q. Okay. Thank you. Again, that was a bad question on my part.

You've written him up how many times besides this one?

A. I can't recall that for sure.

Q. Can you give me an estimate? One? Ten? **A hundred? Five hundred?**

A. Two or three times, at least.

Q. Two or three times?

A. Yes, sir.

Q. Do you recall what they were for?

A. Insubordination.

Q. Insubordination. That's considered a major offense, isn't it?

A. Say it again.

Q. That's considered a major offense, isn't it?

82

A. Again, we go back a long time.

Q. That wasn't my question. Do you consider insubordination a major offense?

A. I do.

Q. How many times did you write him up for insubordination?

A. I'd be guessing to say maybe once.

Q. Once. Do you recall the situation in which that occurred?

A. I do.

Q. When was it?

A. When we first merged back in 2006 or '7, Gary was being supervised by Captain Doug Beales. At that point Gary was very defiant in allowing Captain Beales to do his job.

Q. What do you mean by that?

A. He was very disrespectful and --

Q. Give me an example.

A. When asked to do something, he would not want to reply -- or he would not comply to what the request of the captain was. At that point -- well, it's been very difficult knowing and understanding and being called by Captain Beales to continue that behavior, so I wanted to have a conversation with Gary about why that was occurring. I felt like Gary was absolutely being insubordinate in the fact that -- to argue with a captain and not being able to get along is -- is very disrespectful.

Q. Do you know if Captain Beales wrote him up?

A. Say it again.

Q. Did Captain Beales write him up?

A. I couldn't tell you that.

Q. Wouldn't that be the first line of a complaint would be to the captain and then to you?

A. Well, how this was going for us was I wanted to make sure Captain Beales and I understood what exactly was going on. I think he called me for my advice.

Q. So you are unaware of whether he wrote him up?

A. I would not know that.

Q. But you did write him up?

A. I did make notes, yes, sir.

Q. Do you know if he was disciplined on that?

A. I don't believe so.

Q. Do you know if there was any investigation done of that?

A. I can't recall.

Q. So we're talking about an instance 15 years ago in which you believe he was insubordinate, you wrote him up, and that was the end of that instance. Correct?

A. I believe so, yes.

MR. EDWARDS: That's all I've got.

HEARING OFFICER: Anything else, Mr. Godfrey?

MR. GODFREY: No.

HEARING OFFICER: Okay. Thank you.

MR. EDWARDS: Let's get the Chief back on the stand.

HEARING OFFICER: Chief Stone, I'm not going to swear you in again. You're still under oath.

THE WITNESS: Thank you.

DANE STONE,

called as a witness, having previously first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. EDWARDS:

Q. I'd like you to look again at Exhibit 1, if you would, please. On the first page of Exhibit 1 we have "Corrective Action Matrix 1.B, 'Insubordination Major.'" It might make sense for you to take either that out of the binder or the

85

Corrective Action Matrix, which you'll find in Exhibit 2, because I'd like to compare what it is that we have written down here with the correction action -- Corrective Action Matrix.

What is the Corrective Action Matrix, by the way?

A. That's the tool that we use to make sure that we are consistent.

Q. And you need to be consistent in using the Corrective Action Matrix, correct?

A. Correct.

Q. With No. 2 here you've got insubordination major, and you have three things that are all listed with regard to December 4th, 2020. Correct?

A. Correct.

Q. All right. Now, if we look at the Trakstar notes for December 4th -- actually, it's December 5th, 2020. It was Captain Maxwell.

A. I don't see that in the --

Q. It's on page 14 and 15 of Exhibit 1. Here again, it may make sense to take one of those out of the binder.

A. That is correct, yes.

Q. Okay. We've got "Refusal to obey legitimate orders, disrespect, insolence or like

86

behavior in a non-emergency situation." And you list, "Specifically, on December 4th, 2020 you were out of the proper Department uniform and failed to comply when told by your captain." And that is listed under insubordination major, correct?

A. Correct.

Q. If we look at page 2 of the Notice of Pre-Disciplinary Hearing, we have a reference -- oh, I'm sorry. Yeah, page 2. At the bottom of page 2 we have No. 4, "Violation of Policy 1010.6, Reporting for Duty," and "Corrective Action Matrix 22." And we have a reference to the same thing. In fact, we have it twice. "Specifically, on December 4th, 2020, you were out of proper uniform at the daily briefing and had to be asked to don your proper uniform."

Looks like it's basically the same thing. Is that the same thing, the one that is listed as No. 1 under Exhibit -- or under allegation 2 and the one that is listed as No. 1 under allegation 4?

A. Yes. It looks like it, yes.

Q. All right.

A. Except for the date.

Q. I'm sorry; what?

A. Except for the date.

Q. Well, December 4th, 2020 and December 4th,

87

2020.

A. Oh, I'm sorry. I was looking at under 4 and then under 2. Isn't that what you said?

Q. Yeah. We've got No. 2 here at the bottom of page 1 --

A. Excuse me. I was looking at the bottom of the page. You're correct. Sorry.

Q. Okay. So same thing?

A. Yes.

Q. Is it the department's practice to pile on discipline for the same offense?

A. No.

Q. Let's look at Corrective Action Matrix 22 for a second, "Out of uniform or no uniform." First offense, verbal written reprimand; second offense, written reprimand or 4- to 11-hour suspension; third offense, 12- to 24-hour suspension.

Now, you don't indicate here in either allegation No. 2 or allegation No. 4 whether this is a first offense, second offense, or third offense. Correct?

A. Correct. It doesn't say that.

Q. Even if it were a third offense, the worst that you would impose would be a 12- to 24-hour suspension. Correct?

88

A. With that offense.

Q. Right. Okay. Well, let's go back to No. 2 again. "Specifically, on December 4th, 2020 you were told to wear a proper face mask and failed to comply."

Why don't we go back to No. 4. And I can only presume that the second one under No. 4 is "Specifically, on December 4, 2020 you were out of your proper uniform and had to be told by your captain to don your proper uniform." Well, that looks like the one that's above. Are one or both of these under No. 4, do they relate to being told to wear a proper face mask, to your knowledge?

A. Both those do not mention face masks.

Q. Right. But they both mention the same thing, correct? They both say you're out of uniform, and you had to be told by your captain to don your proper uniform?

A. They do say that you're out of proper uniform, correct. They don't say the same thing.

Q. Don't mention face masks?

A. No, they don't mention face masks or they don't say the same thing.

Q. They don't say what?

A. The first one says on December 4th you

89

were out of proper uniform at daily briefing and had to be asked to don your proper uniform.
Q. Oh, I see. I see.
A. So they do not say the same thing. That's what I was saying.
Q. Okay. Which of those references back to No. 2, when you were out of proper department uniform and failed to comply when told by your captain?
A. What's the question?
Q. Well, as you just pointed out, one of them was out of proper uniform in briefing, and the other one was out of proper uniform and had to be told by your captain. And we look back at No. 2 under subsection 1, first bullet point there, "You were out of proper department uniform and failed to comply when told by your captain." Would that refer to the second one under No. 4?
A. No. It's -- it's a different -- it's insubordination. He didn't do what his captain asked. These are under the uniform policy.
Q. So you can nail somebody twice for the same thing. You're out of uniform and I'm going to nail you for not being in uniform, and I'm going to nail for you insubordination. You can do that?
A. Those are the same thing, if you want me

90

to answer that question.
Q. That's what I want.
A. The second one and that one on insubordination are the same.
Q. Okay.
A. That's how they're read.
Q. Let's look at the third one under insubordination major on page 1. "Specifically, on December 4th, 2020 you were asked to do engine check by your captain and failed to comply in a timely manner."
I'll go to the next page under allegation 3, "Specifically, on December 4th, 2020, you failed to perform your engine checks in a timely manner and had to be badgered to complete." Same thing, right?
A. Same thing.
Q. Yes?
A. Same -- correct, it reads the same.
Q. Although, under No. 3, it's considered minor. Corrective Action Matrix 16.A, "Improper Performance of Assigned Duties, Minor."
A. Because it's under a different matrix.
Q. And that's the question. You fail to perform and we can nail you for various matrixes, and then we can pile them on top of each other. Is that

91

the way this department works?
A. You can utilize different areas of the matrix if they fall into those subcategories.
Q. And you can just keep piling them on until you've got a major issue, correct?
A. No, that's not the way it works.
Q. How does it work?
A. If they -- if they fall into one of the matrix, then you can apply it to that matrix.
Q. And here you say that it is under two matrixes, right?
A. Well, one is under matrix 1.B, insubordination; the other one was under matrix 16.A.
Q. And what I'm saying is for the same violation you can pile on two different matrixes.
A. It's not the same violation. One violation was being told -- not doing what he was told, and the other violation was not doing his job performance.
Q. I see. Now, let's talk about No. 2. It's on page 1. "You were told to wear a proper face mask and failed to comply."
Would it be in compliance with department policy to nail Gary Schvaneveldt for not having his face mask on and allow other people who are in the

92

same place to get away with not wearing a face mask?
A. Everybody was required to wear a face mask in the department.
Q. All right. That's what I was hoping was the policy.
I'd like you to look at Exhibit 23, please. At the top it says December 4th, 2020 at 12:02 p.m. There's a photograph there. Do you recognize where that photograph was taken?
A. I don't see the date. But anyway --
Q. Well, hold on. Keep going until you find a photograph that looks like a guy working on his car.
A. Correct. December 4, 2020.
Q. Do you recognize where that photo was taken?
A. It looks like one of our stations.
Q. Do you recognize who it is that's working on the car?
A. I do.
Q. Who is it?
A. Deputy Chief Powers.
Q. Does he have a face mask on?
A. No.
Q. Is it proper that Deputy Chief Powers got

93

to get away without wearing a face mask and -- what, was he disciplined for that?

A. He is by himself.

Q. He what?

A. He is by himself. He's not in the crew quarters. And that was the -- while you're in -- if you're in your bedroom or by yourself, you didn't need to wear a face mask.

Q. I see. Let's go to the last page of that. There is a notation here. Do you see that?

A. Yes.

Q. 11:30 to 12:30 for one hour, Servpro to clean all front line apparatus at Station 81.

Do you understand that, that all of the crews were at the station?

A. I understand that they were supposed to be there between 11:30 and 12:30.

Q. Okay. So the difference between Deputy Chief Powers not wearing a face mask and not getting any discipline and Gary not wearing a face mask and being disciplined is that Powers was by himself. Is that right?

A. I didn't see those pictures. Deputy Chief Powers is by himself. Gary's situation was he was with the crew.

94

Q. I see. I'd like you to look at a picture right here, side to side. Do you recognize those people?

A. I do.

Q. Who are they?

A. They're members of our department.

Q. Are they Sayre, Ray, and Mata (phonetic)?

A. That's who they look like, yes.

Q. Have they got face masks on?

A. It looks like two of them do.

Q. Which two?

A. Looks like Captain Sayre and Mata.

Q. Well, I'm going to approach for a second, because I think if we look at the original photograph, it may clarify things. I'm going to show you the original photograph from which this copy was taken. Does that help you to determine whether all or any of them were wearing face masks?

A. They have face masks on.

Q. Is wearing a face mask on your chin considered compliance with the face mask requirement of the department?

A. No. If that's the question you're asking me, if they're on properly, I would say no. But they have face masks on.

95

Q. I see. Okay. So they have them on, but they're not on properly. Do you get written up if you don't have your face mask on properly, or can you walk around the station with the face mask on your chin?

A. You would -- you could, yes.

Q. You could walk around with a face mask on your chin?

A. No. You said would you get written up if you don't have your face mask on, and I said you could.

Q. Okay. Well, do you know if any of these men were written up for a face mask violation?

A. I do not.

Q. Ever come to your desk with regard to these guys?

A. No.

Q. What is the Corrective Action Matrix for a face mask violation?

A. The corrective -- or the matrix just applies to the department directive as far as the state public health order and the directive. That's what we -- we don't have a policy on a mask, we have a directive on it.

Q. What is the Corrective Action Matrix for

96

violation of the directive?

A. You could put it under 13.

Q. Okay. If we look at No. 13, first offense, written reprimand to 24 hours. Second offense, 24 to 96 hours suspension and/or demotion to dismissal. Third offense, suspension and/or demotion to dismissal.

With regard to the face mask violation here, you didn't indicate whether it was a first, second, or third offense, did you?

A. It was not indicated on that, no, sir.

Q. So there would be no way for Gary to know what kind of trouble he's in with regard to the kind of penalty that he might suffer just by looking at what it is that you put in the notice of pre-disciplinary hearing. Correct?

A. For that offense, no.

Q. Okay. Now, we look at No. 3 here on page 2 of the Notice of Pre-Disciplinary Hearing. Corrective Action Matrix 16.A, "Improper performance of assigned duties, minor." And you've listed 11 violations. Are they minor in total, or are they minor individually?

A. Each individual one is a minor.

Q. Did you consider them in total to be

97

minor?
A. No.
Q. Did you consider them in total to be major?
A. No.
Q. Did you consider them in total to be more than a first offense?
A. Yes.
Q. Did you note in here -- well, what kind of offense -- first, second, or third offense under corrective action 16.A?
A. I didn't put it in a specific matrix in first, second, or third. Just the totality of them and the number of them.
Q. Well, if you're going to refer to 16.A, minor, shouldn't you put whether this was considered a first offense, a second offense, or third offense?
A. There's 11 offenses.
Q. Exactly. So why is it you didn't put down 11th offense?
A. Why didn't he put get put down as 11th offense?
Q. Why is it you didn't write that down?
A. They're specifically written down.
Q. I see. So he is supposed to be able to

98

figure out from this that this is more than a third offense?
A. It's a minor offense.
Q. A minor offense. So it was one minor offense?
A. No.
Q. It's 11 minor offenses?
A. Eleven minor offenses.
Q. Okay. And then do you total those together into a one great, big major offense, because you've got 11 minor offenses?
A. You could.
Q. Did you? is my question.
A. That was considered in the whole -- with his file and everything else that was -- that we did in the pre-disciplinary hearing for him to account for each of those.
Q. Would you agree with your counsel that, taken separately, these are not fireable offenses?
A. That all 11 are not fireable offenses?
Q. I'm just pointing to what it is your counsel said.
A. Do you have that? I don't know what my counsel said.
Q. Sure. "None of these incidents taken in

99

isolation would likely result in termination, with the exception being the major insubordination incident. Even with that incident, the Department acknowledges that termination in that circumstance would be unlikely."
Would you agree that, taken individually, these would not result in termination?
A. No. 3 taken individually, I don't think they would be terminated -- termin --
Q. How about taken collectively?
A. All of No. 3, I do not believe that he would be terminated by that.
Q. Okay. Let's look at No. 4, because we've got five offenses there. "Out of uniform or no uniform," and we refer to corrective matrix 22. Verbal or written reprimand is the first offense; second offense, written reprimand or 4- to 11-hour suspension; third offense, 12- to 24-hour suspension.
Did you consider these to be -- did you consider the ones that you have under allegation No. 4 collectively or individually?
A. Did I consider them collectively or individually? Again, the same answer. There was five different times that he was out of uniform.
Q. I understand. But did you consider it a

100

first offense, second offense, or third offense, or a fifth offense? Or no offense?
A. There's five offenses there.
Q. So did you consider that to be a fifth offense?
A. Yes.
Q. It's a fifth offense. How is it you let it go beyond a third offense before you brought this case against him for that violation?
A. These were all brought up in the Trakstar during -- when everything was brought up.
Q. "When everything was brought up." So let's look at this. We have in the Notice of Pre-Disciplinary Hearing allegations of violations that begin in August of 2020 and end in December of 2020, and we've got a rash of them here. Did you just kind of hang on and wait till you could hit him with all of them at once?
A. No.
Q. How is it that they all ended up in the same thing here where he's got to respond to 20 of these things at the same time?
A. I -- I don't know.
Q. Do you know if each one of these was investigated separately?

101

A. No.
Q. Do you know if they were investigated individually?
A. No.
Q. Do you know of anything with regard to these other than what you read in the Trakstar?
A. No.
Q. Okay. But you didn't indicate in here that it was a fifth offense with regard to No. 4, did you?
A. No.
Q. Right. There was no reference in any of these to first offense, second offense, third offense -- as to any of them, was there?
A. I figured that Mr. Schvaneveldt could count that he had five offenses.
Q. So you figured that it was up to him to look at the Corrective Action Matrix and figure out what the possible punishment would be?
A. No.
Q. No. All right. So what was up to him? What is it he was supposed to do? He gets this and he's saying, Oh, my gosh, what are they going to do to me? I don't know if it's a first offense, second offense, third offense. Maybe I should just count

102

these up and figure that I'm going to get fired no matter what.
Is that the way that works?
A. No, sir.
Q. How does it work?
A. It says, "Please be prepared to answer questions in responding to the following behaviors that documented."
Q. Well, but you did reference the Corrective Action Matrix, correct?
A. They are, yes. It's referenced in there.
Q. And the reference there was so that you could give him notification that there was a violation of policy and that there was going to be some sort of corrective action taken. Correct?
A. Correct.
Q. But it was up to him to decide whether it was a first offense, second offense, or third offense or more as to how that Corrective Action Matrix was going to apply to him. Correct?
A. No. It was up to him to respond to the allegations.
Q. And that's all?
A. (Witness nods head.)
Q. All right. Okay, let's look at No. 5:

103

"Violation of Policy 914, Personal Protective Equipment and Federal Code." Did you read that federal code before you put that in there?
A. I have not read that code, no.
Q. How was it that that ended up in this letter?
A. That is part of our policies, in the policies and in our federal code -- or in the federal code as far as our PPE, personal protective equipment.
Q. So if Gary were to have sat down with you and said, "I don't understand what this means, the federal code," you wouldn't have any idea, either, would you?
A. I would have looked it up.
Q. But you didn't look it up before you put this down, did you?
A. I did not, because I -- I did not.
Q. All right. There's no reference to the Corrective Action Matrix here with regard to allegation No. 5. Which Corrective Action Matrix applies to this one?
A. You can -- I would say under 14.
Q. No. 14.
A. Just right off.

104

Q. You can find that right now, but you couldn't find it before you put this down?
A. I did not make this document up.
Q. Who did?
A. Deputy Chief Powers.
Q. But it has your name on it, correct?
A. Correct.
Q. Do you take responsibility for those documents that you've signed?
A. Yes, sir.
Q. Okay. So regardless of who it is that ultimately drafted it --
A. Correct.
Q. -- you're the one responsible?
A. Correct.
Q. Any explanation as to why no Corrective Action Matrix was put on allegation No. 5?
A. No.
Q. How about action No. 6?
A. No.
Q. How about action No. -- or allegation No. 7?
A. It says Action Matrix 11.
Q. Okay. "Unauthorized Activity Inefficiency." And we've got "Specifically, sleeping

105

during training by an outside agency on October 23rd, 2020."

Did you look at the Trakstar with regard to that particular allegation?

A. I have looked at it, yes.

Q. October 23rd, 2020. It's on page 16 of Exhibit 1. This is Paramedic Shafto.

By the way, have you had a chance to see how many of these allegations were ultimately made by Paramedic Shafto?

A. I have read through these, yes.

Q. He did the majority of them, didn't he?

A. There are a lot in there.

Q. Yeah. Exhibit 22, I did a little template that shows how many allegations there were, the date, and who it was that made the claims. Shafto had nine, nine of them. Does that tell you anything about the relationship between Paramedic Shafto and Greg Schvaneveldt?

A. No.

Q. Nothing. Okay.

Let's go back to October 23rd, 2020 in Exhibit 1. "Today medical training was provided by two UMC doctors who came into Station 81 to provide the training via Zoom. Gary was asleep in the 84

106

recliners in full recline mode. Both Meg and I woke him up several times but he would just go right back to sleep. This was very frustrating and unprofessional. I can accept that we all doze off during training from time to time. But most employees will do something to show that they care and not just go right back to sleep."

Did you see that, doing something that even Paramedic Shafto admits we all do, as a basis for some sort of discipline in this case?

A. I can see that he said "I can accept that we all doze off during training." I see that. I read that, yes.

Q. Well, if you accept that we all doze off, isn't that kind of an indication that we all doze off and we accept it?

A. I said, I read that he said I can accept it.

Q. "I can accept that we all doze off."

A. I read that, yes.

Q. All right. Oh, so you read it as he can accept it, but he's not admitting that we all doze off, correct?

A. No, I read -- I'm just saying that that's what I read. You asked me if I read that. I said

107

yes.

Q. I see. Do you think that Gary Schvaneveldt was the first and only employee ever to doze off during training?

A. No.

Q. Have you ever issued discipline to any other employee for dozing off during training, to your knowledge?

A. Not to my knowledge.

Q. All right. Then we've got correction action matrix 11. This is back to allegation No. 7, specifically on December 29th, 2020, not getting out of bed until 7:30.

Is that a major issue, not getting out of bed by 7:30?

A. Is it a major issue?

Q. Yes, why?

A. Because our tones go off at 6:30 to wake everybody up. We are on the floor at 7 a.m.

Q. Everybody is on floor at 7 a.m.?

A. They should be.

Q. I didn't ask if they should be, I asked if they are.

A. I'm not on -- at every station to see that they are. So I can't --

108

Q. Well, you've been with the department for what, 23 years or something?

A. Twenty-eight.

Q. Okay.

A. We have five fire stations. I can't be at all five fire stations at 7 a.m. in the morning to make sure that they are all on the floor at seven, dressed and ready to go.

Q. So you think it's possible that they're not all on the floor?

A. Could be.

Q. If that's the case, do they all get written up for it?

A. I don't know.

Q. Is this the first time you've ever had a write-up for being asleep beyond the time that they're supposed --

A. No.

Q. How many times has that happened?

A. I don't know. I can't recall.

Q. Can you give me an estimate? Five? Ten? Five hundred?

A. No. I've been associated with all of them.

Q. Well, how many of them have come to your

109

desk, ever?
A. To my desk as the chief?
Q. Ever, under any circumstance.
A. I can't recall.
Q. More than one?
A. Yes.
Q. More than ten?
A. No.
Q. And then there's another one here at the bottom of No. 7: "Specifically, on August 30th, 2020, staying in your bedroom until 9:50."
Now, if a fire crew is out there in the public until five o'clock in the morning, they come back and sleep in, is that a major violation of the policy?
A. If they sleep in until past the alarm?
Q. Yeah, past the alarm.
A. Yeah. They should be up.
Q. So it's a major violation of policy?
A. It's a violation of policy.
Q. Major?
A. Depends on how many times it's happened.
Q. Let's say it's once.
A. I don't think it's a major.
Q. Twice?

110

A. Depends on the extent.
Q. Three times? You don't know?
A. I didn't say that. I said it could go up.
Q. It could go?
A. Yeah. Depends on the individual, how long they sleep in and how many times they've been written up for it.
Q. You don't have a standard for that?
A. We have the matrix.
Q. I see. And in the matrix we have matrix 11, unauthorized activity and inefficiency. Even if it's a third offense, it's 24 to 96 hours of suspension and/or demotion. It's not a fireable offense, correct?
A. Correct.
Q. I want to look at your letter of termination. It's Exhibit 5, I think.
A. Exhibit 6.
Q. Okay, thanks. All right, Exhibit 6. Did you have any input into writing that?
A. Yes.
Q. Whose input did you get?
A. Deputy Chief Dave Powers.
Q. Anyone else?
A. And attorney -- our attorney, Mr. Godfrey.

111

Q. Did you write it?
A. I did not write it.
Q. Who wrote it?
A. Deputy Chief Powers.
Q. It's got your name at the bottom, correct?
A. Correct.
Q. Do you take responsibility for what's written in it?
A. Yes, sir.
Q. Okay. You indicated in this letter that "neither you nor your attorney disputed your behavior." Do you stick by that?
A. Can you give me the specific where that is in the letter?
Q. Sure. All right, so at the bottom of page 1, last paragraph, "After reviewing the notice and considering the information you and your attorney presented at the hearing, we were left with four conclusions." Number one, "Neither you nor your attorney disputed your behavior."
A. Right.
Q. Did you listen to the tape of the pre-disciplinary hearing?
A. Yes, sir.
Q. And you attended the pre-disciplinary

112

hearing?
A. Yes, sir.
Q. And you concluded that neither I nor Mr. Schvaneveldt disputed the allegations that were made against him?
A. I don't believe so, no.
Q. Okay. "Your negative behavior persisted over years of service and under multiple supervisors." You stick by that?
A. Yes.
Q. No specifics here, however. Correct?
A. There was no specifics written into that letter, no.
Q. Do you think it might have been important for Mr. Schvaneveldt to know which particular negative behaviors you are referring to that led to him being fired?
A. I believe Mr. Schvaneveldt knows his negative behavior, because everything was attached to the pre-disciplinary hearing of all the exhibits.
Q. Okay. So everything that he -- all of the negative behaviors that you are referencing here were contained in the Notice of Pre-Disciplinary Hearing, correct?
A. It says "your negative behavior over

113

years," doesn't it? Over the years.
Q. I know what it says. I'm trying to figure out what it is you meant.
A. What did you ask me?
Q. Well, like I said, the ones that are detailed in the Notice of Pre-Disciplinary Hearing go from August to December. That's not years.
A. No, that's not.
Q. That's about four months.
A. Correct.
Q. So you were adding to those four months that you had listed there when you're talking about years of negative behavior, correct?
A. I added to that, yes.
Q. But you didn't reference any of those years of negative behavior?
A. Not in the letter, no.
Q. Did you note -- did you list them anywhere?
A. In the pre-disciplinary hearing, if I remember correctly, his negative behavior is previous correction action on Exhibit E. And as I said, I'm aware and I believe that Mr. Schvaneveldt understood or knew his negative behavior.
Q. So you were presuming that he knew what

114

you were talking about?
A. I presumed that, yes.
Q. All right. No. 3: "Your behavior and attitude belie a general disregard for personal or public safety." What are you talking about?
A. His failure to do truck checks, his failure to wear proper personal protective equipment, and his failure to comply with the mask mandate directive.
Q. Why is it you didn't put that down here?
A. I guess we were trying to be a little more concise in the letter.
Q. All right. And "You offered justifications for your behavior but did not express a willingness to change." What would have satisfied you with regard to evidencing a willingness to change that would have saved his job?
A. Had Mr. Schvaneveldt taken responsibility or even some sort of responsibility to what he has done; but instead, he did not.
Q. If he had done that, would you have saved his job?
A. I definitely would have thought about that. That made me -- that was one of my -- I would say the hardest thing for me was that I wanted Gary

115

to accept responsibility for actions that he had done.
Q. Had he accepted the responsibility, you would have saved his job?
A. I definitely would have taken that into consideration.
Q. Well, I don't care what you would have taken into consideration. Would you have saved his job?
A. Yes.
Q. So it all got down to ultimately, even with all of the things that you have alleged against him, even if all of them were true, if he had had a different attitude, accepted responsibility, you would have kept him on?
A. Yeah, I believe so.
Q. So having a bad attitude is fatal on top of everything else?
A. No, I didn't say attitude. It was responsibility.
Q. I see. Tell me what it is that you mean by accepting responsibility. If he had said, "Yeah, I did all that stuff, I'm really sorry for it, please, let's work this out," would that have been accepting responsibility?

116

A. I don't want to put words into Gary's mouth. But had he said, hey, I wasn't -- you know, things have been rough at home, I wish I would have -- you know, obviously me and Shafto weren't getting along very well, but yeah, I did do those things, I haven't done my truck checks lately on time, those are all things I'm struggling with right now, but I promise you that you won't hear another peep from me in the next -- whatever, how much time he had left, and I'd just appreciate if you'd consider that.
Q. And that would have saved his job?
A. It would definitely change my thought process.
Q. I'm not interested in your thought process, I'm interested in whether he would still have a job today if he had done that.
A. I can't say that for sure. I'll tell you this, yes. I've already said yes.
Q. All right. And we've got in the second paragraph of the second page of Exhibit 6: "This type of behavior is not new with you. Beginning in 2006 and continuing throughout your career...multiple efforts have been made to correct your behavior."
In that, are you referencing Exhibit E to

117

Exhibit 1, this list of previous corrective action that is the last page of Exhibit 1?
A. There was no reference made, but it's spelled out there.
Q. "Multiple warnings, letters, suspensions, and a demotion have had little effect on this untoward behavior." No reference in there as to which particular warnings, letters, suspensions, and demotion you're referring to, correct?
A. Correct.
Q. "Even multiple supervisors requesting repeatedly -- in some cases begging -- for you to follow SDMF policy have been unsuccessful." No reference there to which supervisors, what the requests are, and what the begging consisted of. Correct?
A. Nothing in that.
Q. What is it you are referring to?
A. To his previous corrective action.
Q. Okay. So we look at Exhibit E, the last page of Exhibit 1 to this proceeding, and that is the evidence of the requesting repeatedly and begging for him to follow the policy?
A. And the Trakstar notes and --
Q. And the Trakstar notes?

118

A. Correct.
Q. All right, let's go down to the next paragraph:
"The effects of your behavior have resulted in many day-to-day difficulties with the Department. Below are just a few.
"You are putting yourself and your crew in harm's way by not following safety practices and policies."
What safety practices and policies are you referring to?
A. Again, not doing truck checks, not following proper protective, personal protective equipment, PPE, not wearing masks during the -- his mask during -- on shift.
Q. "Your Battalion Chief cannot trust you as an acting captain, which is required in your job description and which makes it difficult for your Battalion Chief to replace the captain position when your captain is off."
What battalion chief are you referring to?
A. Deputy Chief Greg Stewart, who was his battalion chief at the time.
Q. No reference in here to the fact that you're referencing Chief Stewart, correct?

119

A. No.
Q. "Many of our officers, acting officers, and employees refuse to work with you because they do not want to deal with your obstinance and lack of concern for safety." Who?
A. Which officers?
Q. When you say "many of our officers, acting officers, and employees refuse to work," who has told you that they refuse to work with Gary Schvaneveldt?
A. I've been told by Chief Stewart and Deputy Chief Powers that that is the case.
Q. So you don't know the names, you just know that you've been reported that by Chief Stewart and Chief Powers?
A. I do know one captain.
Q. Who is that, specifically?
A. Spencer Gregory, Captain Gregory.
Q. "You require a disproportionate management burden and, as a result, limit the time available to your captain to focus on newer and less-experienced employees or other responsibilities."
What do you mean by that?
A. I believe it's stated in some of the -- that he is a management drain. And so they have to continue to focus on Gary and keep him up in the

120

policies, and then they can't focus on anything else.
Q. So you have used as a basis for firing Gary the assertions that were made that we referred to where he's a management drain, which I think you earlier said was an expression of opinion?
A. True.
Q. Do you discipline people based on the opinions of others?
A. No.
Q. How did that happen?
A. How did what happen?
Q. How did it happen that you take seriously the opinion that he's a management drain and used that as a basis for firing him?
A. It's my opinion from everything that he has had done over the past years.
Q. I see.
A. You asked me what I thought about that, and that's what I said.
Q. I'm not sure that's what I asked, so let me ask it clearly so we've got a record. When I asked you what you meant by this, it was my understanding that you said he is a management drain, and you referenced the notes in Trakstar. Is that correct?

121

A. That was the statement that was said. But everybody else that has worked with Gary has made those statements, people that -- excuse me. Not everybody else. I can't say that. People that have worked with Gary, managers that have worked, supervisors that worked with Gary have stated that.

Q. Who?

A. Shafto, Captain Maxwell that I know of, and then 18 years of managers.

Q. Well, if you're going fire a guy for 18 years of mismanagement, wouldn't it make sense that you would tell him who the people are over those 18 years that have made this opinion of yours, this conclusion, valid?

A. I didn't put it in the letter, no.

Q. Can you tell me now?

A. Not right offhand, no.

Q. Then you came to the conclusion the Policy 1017 Corrective Action just wasn't going to work for this guy. Correct?

A. I'm sorry. What?

Q. When you said "Policy 1017 Corrective Action states," then you list that and you say, based on your history, SDMF does not view continued corrective action as an option, would you have

122

considered it an option if he had taken responsibility in the ways that you have suggested to us?

A. Yes.

Q. "Despite years of corrective action, your performance, efficiency, and morale have not improved. The morale of the Department is suffering because of your actions. By refusing to wear a mask, rise on time, perform proper vehicle inspections, or wear proper protective equipment, you place other employees and the people you serve at risk. Based on your past behavior, SDMF does not believe continued or future actions will be successful."

But you would have considered them to have been successful if he had simply said, "I take responsibility; let's work this out"?

A. Which would have been a change for Gary.

Q. Okay. "For these reasons, SDMF is terminating your employment, effective immediately. We cannot continue to allow our employees in the department to be put at risk by your actions."

Well, it sounds to me like the only action that puts people at risk that you would not put up with had to do with his taking responsibility. You've got all the actions over here, and you say if

123

he'd have just copped to that taking responsibility, you might have kept him?

MR. GODFREY: Objection. That mischaracterizes the testimony and the answers. It's Mr. Edwards testifying, not the witness.

HEARING OFFICER: I'm going to go ahead and let him ask that question.

MR. EDWARDS: What?

HEARING OFFICER: You can go ahead and ask that question.

Q. (By Mr. Edwards) So you've got that over here, all of the actions but no responsibility. On the other hand, you have all of these actions, but if he'd have taken responsibility, he'd have kept his job. So the differences in him taking responsibility and not the actions that you claim put the public at risk. Isn't that true?

A. No.

Q. It's not?

A. My -- my thought process for that is that had he taken responsibility for those actions, that his behavior would have changed; thus, that the safety and the risk would have changed. He did not take responsibility for any of these, so the actions were going to continue. They have continued since

124

2006.

Q. But the actions that you list here that put the public at risk, those are what they are, correct? I mean, there's nothing you can do to change those. If they put the public at risk --

A. I personally can't change them, no.

Q. So if they put the public at risk without taking responsibility, they would have put the public at risk had he taken responsibility?

A. Because I feel like he would have changed his behavior --

Q. I see.

A. -- if he took responsibility.

Q. So you're looking prospectively as opposed to retrospectively?

A. Correct.

MR. EDWARDS: Okay. That's all the questions I have.

HEARING OFFICER: Thank you.

MR. EDWARDS: I would like to take a short three-minute break, if possible.

HEARING OFFICER: Yes, let's take five.

(Recess from 11:46 a.m. to 11:52 a.m.)

HEARING OFFICER: All right. We will go back on the record. Mr. Godfrey, your

125

cross-examination.

CROSS-EXAMINATION

BY MR. GODFREY:

Q. Chief Stone, in the general supervision, disciplinary actions in the department, can you tell me what the division of duties in your command staff was like?

A. Yes. So Deputy Chief Greg Stewart is over the operations of the department, and Deputy Chief Dave Powers is over the administrative department work.

Q. And so the administrative would include he pays more attention to the personnel actions?

A. Correct.

Q. Okay. Does the department have a grievance policy, to your knowledge?

A. Yes.

Q. And would that be utilized by an employee who feels like he's being treated unfairly?

A. That is correct.

Q. So if an allegation was made by a supervisor about an employee that he felt was inappropriate or improper, he would have that grievance procedure available to him?

A. Yes.

126

Q. In your looking through the file of Mr. Schvaneveldt, can you see that he ever availed himself of any grievance process?

A. Not that I'm aware of.

Q. When you went into this -- this disciplinary proceeding with Mr. Schvaneveldt, did you have a desired outcome?

A. No.

Q. Was it your intent from the first moment you heard about the process going forward to fire Mr. Schvaneveldt?

A. No, it was not.

Q. Are you -- when you were a deputy chief, were you over the operations?

A. Yes.

Q. So you did not deal with, I guess, the majority of personnel matters?

A. I did not, no.

Q. Would it be safe to say that notwithstanding that, you still have a general idea of the disciplinary history of the firefighters in the department?

A. I do.

Q. And so going into this particular process, you were aware, generally, of Mr. Schvaneveldt's

127

disciplinary history?

A. Yes, I was.

Q. And notwithstanding that, it wasn't your formed intent to start to terminate him?

A. No, it was not.

Q. Were there factors you were aware of going into the process that, in your mind, mitigated against termination?

A. Yes.

Q. Tell me what those were.

A. Gary's time on the job. Both Gary and I have always been very cordial to each other. Never had any issues with Gary on a personal basis. So those all played big factors for me.

Q. When you say his time with the department, can you be more specific?

A. His time in the department and in the retirement system.

Q. Okay. It concerned you that an employment action was coming to you with somebody who had essentially less than two years left to complete to get 20 years in?

A. Yes.

Q. So -- and I'm characterizing your testimony earlier, but you said from the time of the

128

pre-disciplinary meeting until you made the decision, you thought about this a lot?

A. I did.

Q. And that was one of the things that weighed on your mind?

A. Yes.

Q. The pictures that were shown to you earlier, was Deputy Chief Powers, from what you could see in the photo, out of compliance with the policy?

A. No.

Q. The three individuals who were standing in the kitchen area with their masks, two of them had their masks pulled down, one didn't appear to have a mask on at all, do you believe they were out of compliance with policy, from what you could see in the photo?

A. From what I could see in the photo, yes.

Q. Is it -- is it possible for the department to discipline every circumstance of violation of policy?

A. No.

Q. It appears from the record, and I'm just stating a general appearance, that there was attention paid to, if not an effort to document Mr. Schvaneveldt's noncompliance with policy?

129

A. Yes.
Q. Is that the way you saw that?
A. Yes.
Q. Do you have an idea what might lead to that?
A. His behavior in the past.
Q. When you were being questioned by Mr. Edwards, there was a long period of time where you were talking about -- and I'm characterizing this again; I hope I get it right -- sort of either accumulating offenses, or I think Mr. Edwards' term was piling on offenses. Is it possible that a single course of conduct could violate different policies of the department?
A. Yes.
Q. And did you try to note that in Mr. Schvaneveldt's discipline particularly?
A. Yes.
Q. So an incident where -- and I'm only speaking to this from your review of the information, but there's information in his file over the course of the last five months where he had an interaction with Captain Maxwell, where Captain Maxwell indicates he asked him to put on a mask repeatedly; and the end of the exchange was -- I'm not doing the whole

130

exchange, but the end of the exchange was Captain Maxwell saying, look, I'm going to have to write you up. I don't want to write you up.
And Gary said -- I'm sorry -- Mr. Schvaneveldt said -- that was disrespectful -- Mr. Schvaneveldt said, well, go ahead and make your note, or go ahead and write me up, something to that effect?
MR. EDWARDS: I'm going to object to the characterization of "something to that effect." Why don't we go ahead and just reference it.
HEARING OFFICER: Yeah. Can you make that just a little more clear, Mr. Godfrey?
MR. GODFREY: Sure.
HEARING OFFICER: Ask your question in a little more concise way.
MR. GODFREY: Sure.
Q. (By Mr. Godfrey) The conduct noted by Captain Maxwell that resulted in the written reprimand for insubordination, do you view that as violating the requirement to wear a mask and being insubordinate?
A. Yes.
Q. And as you look at those two things, is the department disciplining Mr. Schvaneveldt twice

131

for the same conduct?
A. No.
Q. So there are numerous entries in Mr. Schvaneveldt's personnel file, Trakstar notes or actual disciplinary measures for sleeping in. Those occurred on different days.
A. Correct.
Q. So is it your view that the department is piling on and disciplining him more than once for the same offense?
A. Three different offenses.
Q. Okay. Will you look at the disciplinary matrix in note No. 29. Do you have that in front of you? I think it's Exhibit 2, if I remember right.
Will you just read what note No. 29 says in terms of offense?
A. "Accumulation of unrelated offenses."
Q. So then if you look at the third offense, what is the potential discipline?
A. Suspension or to dismissal.
Q. In your view, is that where things are with Mr. Schvaneveldt?
A. Yes.
Q. If there is a discipline matter that's initiated in the department somewhere, are you always

132

involved in the disposition of that one way or another?
A. No.
Q. What rises up to your desk in disciplinaries?
A. When it becomes where we might have to do a pre-disciplinary hearing, further than more than two days off, a suspension or demotion.
Q. Why don't you involve yourself with things before that?
A. Because I have personnel to do that. I have to stay -- I have to be the unbiased person when it comes to that.
Q. When you say "unbiased," you know your firefighters?
A. Correct.
Q. And you know their employment histories, whether they may be good or bad?
A. Correct.
Q. So when you say "unbiased," explain to me what you mean.
MR. EDWARDS: I'm going to object on the basis -- I mean, I know that we're not specific rules of evidence here, but I don't think Mr. Godfrey is allowed to lead this witness to all of his testimony.

133

I'm going to object on the basis that it's leading.
MR. GODFREY: It's not a leading question, your Honor. I'm asking him to tell us what he means by it. There's nothing leading about it.
HEARING OFFICER: Yeah, that's overruled. I don't think he's leading. The witness -- he's your witness. You called him.
MR. EDWARDS: He's a hostile witness. I'm allowed to lead a hostile witness.
HEARING OFFICER: I agree. But that's not a leading question.
Q. (By Mr. Godfrey) So the question was, you know your firefighters' histories, but you said you're supposed to act as an unbiased decision maker. Tell me how you handle that.
MR. EDWARDS: That's not leading? I'm sorry. I'll withdraw it.
HEARING OFFICER: It's overruled.
THE WITNESS: So to be unbiased in that situation when it comes to me, that I look -- I look at everything, make sure that everything was done properly, and then make that decision off of all that information that's brought to me.
Q. (By Mr. Godfrey) Do employees have access to Trakstar? Do your general firefighters, employees

134

in the department have access to Trakstar?
A. Yes.
Q. Could Mr. Schvaneveldt see the notes made in Trakstar about his conduct?
A. Yes, he could.
MR. GODFREY: I have no more questions.
HEARING OFFICER: Thank you.
Mr. Edwards?
MR. EDWARDS: I do have some redirect.
REDIRECT EXAMINATION
BY MR. EDWARDS:
Q. Let's look at Corrective Action Matrix 29, accumulation of unrelated offenses. We've got first, second, and third offense. You were just asked about that by Mr. Godfrey. If you're allowed to accumulate related offenses, how come there's no reference whatsoever in your notes of pre-disciplinary hearing that you were going to look at Corrective Action Matrix No. 29 to accumulate these unrelated offenses?
A. His offenses were just the -- just that offenses that were documented were -- were noted.
Q. Well, I understand that. What I'm asking is this. I indicated to you, I asked if it was possible for you to pile on offenses. Mr. Godfrey just said, well, if you look at No. 29 here, what's

135

it say? Well, it says that you have the ability to accumulate unrelated offenses.
My question is this. Were you accumulating unrelated offenses in this particular case?
A. We did look at all of his offenses and take that into consideration.
Q. Why is it that you did not reference the ability to do that under the Corrective Action Matrix and then indicate what first, second, or third offense you're looking at? Why is it that we're hearing about this for the first time in this appeal?
A. The reasons -- all I can say is that we just documented all the offenses that he had.
Q. Okay.
A. And the matrix, Mr. Edwards, is for supervisors and for us to be, as you've asked, consistent. And that's in there. Now, there was not a violation of 29. The violations were listed in the pre-disciplinary hearing for him to address.
Q. How do you violate 29?
A. 29 would not -- he couldn't address all of 29. There's no way he can go, well, I need to address all of matrix 29. We wanted him to address those specific incidents.

136

Q. If you were going to discipline him for every single instance that you allege in all seven of your allegations, wouldn't that be an accumulation of the offenses? Isn't that how it is that you were going to make a determination as to whether this man should be fired?
A. I guess we could put it on there. I don't know how he would have answered, or how he would have prepared answers for that -- that violation.
Q. How is it you would violate No. 29? How is it that somebody would violate it?
A. Exactly my answer. How do you violate 29 when it's an accumulation? He could see the accumulation of his -- what he -- what his violations were, saw the accumulation of those in the pre-disciplinary hearing.
Q. So it's possible to violate 29, but you're not sure what it means? I'm not sure I know what it means. And maybe I'm putting words in your mouth, and I don't want to.
A. I'd be more than happy to --
Q. I'm just trying to -- what would be an instance in which you would cite Corrective Action Matrix 29 in any disciplinary --
A. Not necessarily a specific violation.

137

It's for us to utilize, or supervisors to utilize if there is an accumulation of unrelated -- unrelated offenses.

Q. In order to protect someone's due process rights, would it be your understanding that you need to let Mr. Schvaneveldt know that you were going to accumulate unrelated offenses under 29 and use the Corrective Action Matrix relating to No. 29?

MR. GODFREY: Objection. He's asking for a legal conclusion.

MR. EDWARDS: I asked his opinion.

HEARING OFFICER: I'm going to let him answer the question. It's his opinion. I don't know that it has a lot of value, but I'll let him answer it.

THE WITNESS: I guess you could put it on the pre-disciplinary hearing or the letter and let him know that we could think that. But we do address that, if I'm correct. "The evidence of these allegations, along with your previous performance history, are attached as Exhibit A through E." It's in there.

Q. (By Mr. Edwards) But no reference to 29?

A. No reference to 29, no, sir.

Q. I believe you were asked by Mr. Godfrey if

138

it's possible for you to discipline every violation of the policies, and you indicated no. Is that a correct assessment of the question and answer?

A. Yes.

Q. But that there was an effort that was undertaken to document Mr. Schvaneveldt's violations of the policy, correct?

A. By his supervisor, yes.

Q. That was not an effort that was undertaken with regard to other employees. Isn't that true?

A. I can't answer that question.

Q. Who was the instigator of that effort?

A. The instigator of what effort?

Q. The effort to document Gary Schvaneveldt's violations of the policy.

A. Well, his supervisors documented his violations of the policies.

Q. What I'm getting to is this. Each one of these supervisors supervises numerous people. Did you look at the number of claims of violations of policy from these supervisors as to employees other than Gary Schvaneveldt?

A. No.

Q. Why not?

A. There was no need for me to look at that.

139

Q. Would it violate policy to be selectively going after Gary Schvaneveldt for violations of policy and not other employees who have violated the same policy?

A. It wouldn't be an acceptable behavior.

Q. I'd like to look at page 14 of Exhibit 1 and a note dated December 15th, 2020. This is from Captain Sayre. Second line says: "I had a closed-door sit-down with Gary today about the last few months and his notes in Trakstar. Gary had not seen any of the notes and has not logged into Trakstar since his last review in July."

Is that uncommon for an employee not to log into Trakstar to see what's going on?

A. I don't know.

Q. Okay. "We talked about each note and the recurring themes that are taking place. There were multiple notes about late, PSTrax" -- I don't know what that is -- "sleeping in, not wearing uniform, not wearing mask, and insubordination. Gary was made aware that this is his last warning. He is on thin ice and is being watched very closely."

Now, you reviewed that language because you put that as part of the notice of pre-disciplinary hearing, correct?

140

A. I did read that.

Q. What did you understand by that language?

A. That he had several infractions and that people were watching what he was doing, supervisors.

Q. Do you know if they were watching other employees that closely?

A. I would hope so.

Q. Do you know if Captain Sayre ever gave anybody else a final warning and told him that he was on thin ice?

A. I do not know that.

Q. You indicated that even though you were over operations -- or, no. Even though you -- yeah, even though you were over operations, you had a general sense of what was going on with Gary Schvaneveldt before you became chief. Is that correct?

A. Correct.

Q. You didn't tell us what that general impression was. Did you see him as a troublemaker?

A. No.

Q. Well, you were cordial with each other. Did you see him as noncompliant?

A. Yes.

Q. What do you base that on?

141

A. Just the stuff that I had heard come through. I told you in 2017, '18, I was part of a disciplinary discussion with his captain, Chief Powers, and Battalion Chief Stewart, just as somebody to witness it, but I wasn't involved in any of the disciplinary action. And then just his routine disciplinary history.
Q. How is it you knew about his routine disciplinary history?
A. It's just -- it's knowledge among the executive staff.
Q. Mr. Godfrey indicated that it would have been possible for Mr. Schvaneveldt to have entered into Trakstar and to have taken issue with his supervisors who had made negative assertions against him. Is that correct?
A. Correct.
Q. Are you aware of anybody ever in the history of the department that's ever done that?
A. Taken actions against their supervisor?
Q. Yeah. They put a note in that says: You said this about me. Well, you know what? You're lying about that. That's not true, this is what really happened.
A. Not right offhand. I can tell you that I

142

have done that in my history.
Q. Anybody else that you're aware of?
A. Not that I'm aware of.
Q. Is it the policy of this department to discipline someone based on rumors about them?
A. No.
Q. In that case, to what degree did your knowledge generally -- that you had acquired about Gary Schvaneveldt over the years impact your decision to fire him?
A. I reviewed his file.
Q. That was it? Didn't make any difference what you'd heard about him before?
A. Well, I have known things with Gary, so reviewing his file were just solidifying things I had heard through my years of service here.
Q. So you heard rumors, and then you --
A. I didn't say they were rumors.
Q. What were they?
A. They were documented infractions.
Q. When you were in charge of operations, did you look at his documented infractions?
A. Did I pull his file?
Q. Yeah.
A. No.

143

Q. But I think you indicated you had heard from enough people there was an issue there. Correct?
A. Correct. Like I said, I was part of some of the meetings with him and his captains.
Q. All right. It's not possible to discipline for every infraction. Is it possible to selectively discipline against a particular individual?
A. I guess everything's possible.
Q. Have you ever heard any allegation of that?
A. I have not.
Q. Have you ever heard anybody say, I'm being picked on by this department?
A. No.
Q. This is the first time?
A. That I can recall.
MR. EDWARDS: I've got nothing else. I'm done with this witness.
HEARING OFFICER: Thank you.
Anything else, Mr. Godfrey?
MR. GODFREY: No.
HEARING OFFICER: Thank you, Chief Stone.
So let's talk about time. Where are we

144

time-wise?
MR. EDWARDS: That is hard to say. I can tell you I have designated some other witnesses. I would like to speak to Deputy Chief, Assistant Chief -- I'm sorry. I know that these ranks are important. I know. I used to work for a police department and I know how important it is, but I can't keep them all straight. But Deputy Chief --
HEARING OFFICER: And I understand. I'm not trying to rush you at all. I just want an estimate of -- do we want to take a lunch break?
MR. EDWARDS: I think we might want to take a lunch break at this point.
HEARING OFFICER: Yeah. And then how much do we have left?
MR. EDWARDS: I've got about four other witnesses. None of them are going to take as long as Chief Stone did.
HEARING OFFICER: Okay. Mr. Godfrey, what's your thoughts?
MR. GODFREY: I'm fine to take a break now if everybody wants. I don't need one. My preference is always to keep going, but I'm worried about our court reporter. So I'll do whatever you want. My -- my portion of this isn't going to take up an hour of

145

time, I can tell you that.
HEARING OFFICER: Okay. Why don't we come back at one. That's 40 minutes.
(Recess from 12:18 p.m. to 1:01 p.m.)
HEARING OFFICER: We'll go back on the record. Mr. Edwards.
MR. EDWARDS: I call as my next witness Deputy Chief Powers.

DAVID POWERS,
called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. Could you tell us your name and spell your last name for the court reporter, please.
A. It's David Powers. Last name spelling is P-o-w-e-r-s, Deputy Fire Chief.
Q. Do I call you Chief Powers?
A. It doesn't matter.
Q. Well --
A. That's fine.
Q. Okay. I understand. I used to represent a fire department, and I know that rank is an issue always. And just don't want to be in a position where I'm stepping on toes here.

146

Chief Powers, tell us a little bit about your background in the fire service.
A. Been in the fire service for 33 years. I started in the fire service to put myself through school and fell in love with it and stayed with it.
My previous employment, I was -- worked for the South Davis Fire District prior to the merger as a captain and left there in '98 to become the fire chief in South Ogden. And was there for seven years and came -- prior to that I was -- worked for the health department and the State Fire Marshal's Office. And then went to work to take the job with South Ogden. Came back here in 2006 as a part-time firefighter and worked my way up to the position of Deputy Chief.
Q. When you say you worked your way up, what do you mean? I mean, you started as a firefighter? You started at the bottom again?
A. Started as a firefighter, yeah.
Q. Okay. And eventually became a captain?
A. Went from firefighter to engineer to captain for a real short time, and then to fire marshal, and then to deputy chief. I've been the deputy chief over administration for the last seven and a half years.

147

Q. Are you familiar with the policies and procedures of the South Davis Metro Fire Department?
A. Generally, yes.
Q. You sat through Chief Stone's examination earlier today, correct?
A. Yes.
Q. Okay. I'm going to ask you some of the same questions that I asked him, but hopefully, I'm not going to take as long.
What I'd like to look at immediately is Exhibit 20 in this matter. This is Policy 103. And Chief Stone and I talked a little bit about the fire chief's authority. Now, you work directly under the fire chief; is that correct?
A. Yes.
Q. He's the ultimate decision maker in the department, correct?
A. Yes.
Q. Okay. Tell me, to what degree do you give either input or counsel or make decisions with regard especially to disciplinary matters in the department?
A. So as far as input, we generally get input from a lot of sources on policy, especially personnel policies. But we get general input on all the policies based on those with the expertise in those

148

areas.
Q. All right. If we look at Exhibit 20, which is Policy 103. I want you to look at the third page -- fourth page. It says at the bottom policy manual 12 in the lower right-hand corner. And I want to ask you a little bit about when it says '"shall' or 'will' indicates a mandatory action." It's the third thing down on there.
What do you understand "mandatory" to mean?
A. Mandatory for myself? Or for the --
Q. Well, with regard to any of the policies of the department.
A. So I guess I can't answer that question without clarifying that, generally speaking, "shall" or "will" means that all personnel will follow it without disregard. But the fire chief has his interpretation of it as well, which, for example, our policy states that this hearing will go to our fire board, but that was changed with the fire chief and the fire board making that discretion to change it.
Q. Okay. I understand.
What do you understand the word "should" to mean? When it says "generally required or expected action, absent a rational basis for failing

149

to conform," how do you understand that?
A. Exactly as it reads.
Q. Good answer. What do you understand a rational basis to mean?
A. A rational basis meaning that if you're going to vary from it, there's got to be some rational justification for it, which I think I just gave you an example of one.
Q. If you would, please.
A. I believe I just gave you one. When we changed the hearing would be a good example of that.
Q. Okay. I understand.
I believe that the chief indicated that you had either had some input into or actually drafted Exhibit 1, which is the Notice of Pre-Disciplinary Hearing. What was your input into that?
A. My input was taking the various notes and violations and setting them up as policy violations 1 through 7, and then detailing each of the specific actions that supported the violation of those policies.
Q. So you are the person who coordinated the violations as you found them in the record, I think they were almost all of them in Trakstar, to the

150

claim of violation of policy. Is that correct?
A. So what we took a look at was notes that were made in Trakstar, determined the violations that were made, determined what policies were violated, listed the policies that were violated, and then listed the actions under those policies to support the action of moving forward.
Q. Are you the person who made the determination as to the Corrective Action Matrix that would apply to each of the allegations of violation of policy?
A. The matrix was listed as the policy -- or with the policy violation in short form to show generally that there was a violation or what that -- what potential violation -- or actions could be taken for those individual items. However, each one of -- the matrix is not the policy. It's a reference point or a table, if you will, to show that there are policies that directly relate to that matrix.
Q. Well, let's look, for example, at the bottom of page 1 of Exhibit 1, which is the Notice of Pre-Disciplinary Hearing. We have under allegation No. 2, "Corrective Action Matrix 1.B Insubordination Major," and then there are three things that are listed there.

151

Was the point in listing Corrective Action Matrix 1.B Insubordination Major to advise Mr. Schvaneveldt that this was what was at least a possibility of the type of disciplinary punishment that would arise if these three actions were found to be justified?
A. Not necessarily. The matrix is to show that there is evidence within our policies which shows that, like throughout our policies as far as, like, even some of our performance behavior, it states that insubordination would be grounds for corrective action. The matrix just shows a more linear way of what could happen based on violation of that matrix, or violation of that policy. The whole matrix is there intended to create more of a consistency in how we give out discipline rather than how we give out discipline.
Q. So let me see if I understand this correctly. Are you telling me that the Corrective Action Matrix is not the standard by which a determination of discipline is going to be gauged?
A. It's a method used to determine. It's not the standard.
Q. Is there a standard, then?
A. Yes.

152

Q. What is that standard?
A. I believe it's found in the corrective action policy.
Q. Okay. That's 1017. That is Exhibit 3. Can you show me where you're talking about?
A. 1017.3.
Q. Okay, "Determining the proper corrective action." And what are you referring to when you say that this is the standard as opposed to the Corrective Action Matrix being the standard?
A. It says that factors to be considered in making these decisions on corrective action are, 1, seriousness of the offense; 2, member's past history with the department; and 3, past practices of the department in dealing with similar offenses, see the department matrix.
Q. In referring to the matrix in the Notice of Pre-Disciplinary Hearing, what was the intent? Was it to indicate this is something that might happen, this is something that will happen if these are going to be found to be meritorious, or is it just a reference that says, go look them up and see how much trouble you're in?
A. Could you repeat the question?
Q. Yeah. Why did you put in any reference to

153

the Corrective Action Matrix in the Notice of Pre-Disciplinary Hearing?

A. To give Mr. Schvaneveldt an idea of the actions that were being taken in a more short form. We could have certainly, and then we did in most cases, list the actual policy violation as well.

Q. You didn't do that here, though, did you?

A. Here what?

Q. You didn't note every policy violation here?

A. I don't know what you're referring to.

Q. Well, on any of these.

A. Are you referring to the --

Q. We've got No. 1, violation of Policy 1010.8, but we don't have anything on No. 2.

HEARING OFFICER: I'm not sure he knows which exhibit you're talking about.

Q. (By Mr. Edwards) Oh. I'm talking about Exhibit 1, page 1, the Notice of Pre-Disciplinary Hearing.

A. Okay.

Q. And I'm going to refer to these seven numbered things as allegations, if that's all right.

Under allegation No. 1 you have violation of Policy 1010.8, but there is no reference to a

154

policy with regard to No. 2 or No. 3. There is one on No. 4. And then there is on 5, as we talk about Policy 914, and then there's a violation of department directive. And then on No. 7 there is not.

Why is it that you did not list the particular policy that you claimed were violated with regard to all seven of these?

A. So the reason that not every one of them were listed is so that Mr. Schvaneveldt could see through a quick reference through the matrix that he could see that these were actual items that were found in policy that were a possible violation. I did not want to go through each individual and cite every single policy to require Mr. Schvaneveldt to have to look up each individual policy on his own.

And in addition to that is that in some cases, for example, insubordination, while it's not divided out as far as the seriousness of it in policy, we could -- we wanted to be able to look at insubordination as to -- as a couple of different seriousnesses of it. For example, it just says in policy that insubordination is grounds for termination -- or grounds for disciplinary action, excuse me -- where in the matrix it divides it out

155

into several areas, such as in an emergency situation it's going to be dealt with differently.

And then with -- it's also going to be looked at differently based on the circumstances of it. I think we're looking at in a way to be -- to mete out a fair action based on the circumstances leading to the insubordination rather than just insubordination.

Q. Do I understand you correctly to say, then, that you did not reference the policies for Mr. Schvaneveldt's convenience so that he wouldn't have to look them up?

A. They were already detailed with the matrix as far as the matrix being adopted as an appendices to show that they were part of policy.

Q. Well, let's look at, for example, No. 2 here, Corrective Action Matrix 1.B in Exhibit 1, page 1. "Corrective Action Matrix 1.B, insubordination major." I look up insubordination major, non-emergency, there's no reference at all to a policy here in the matrix. And do you think it would have been helpful for Mr. Schvaneveldt to have been able to see what particular policy he was accused of violating that would have given rise to the offense of insubordination major under 1.B?

156

A. No.

Q. That would not have been helpful to him?

A. Based on his previous history that we've had with him, no.

Q. Why do you say that?

A. Because whenever we have brought anything to his attention and made reference to policy, his behavior is -- was very similar to the way it was in the pre-disciplinary hearing. So --

Q. So you'd done it before and just decided not to do it this time?

A. Never had to do this type of action before.

Q. But you indicated just a second ago that you had referenced policies to him before and that he had not come around. Isn't that true?

A. Referenced policies in the past, but we didn't have the matrix at the time that those -- during the past time.

Q. But you did reference the policies that you claimed he had made some violation of, correct?

A. Yes.

Q. And this time you just decided not to do that?

A. No.

157

Q. No, you decided -- I'm sorry. This time you decided not to do that; is that correct?
A. Yes.
Q. Okay. All right.
Before the Notice of Pre-Disciplinary Hearing was issued, had you come to a conclusion that Gary had engaged in a violation of policies and procedures of the department?
A. Could you repeat the question?
Q. Yeah. Before you -- before this thing went out, before Exhibit 1 went out, had you personally come to the conclusion that Gary had violated policies and procedures of the department?
A. No.
Q. Had you come to the conclusion that there was at least sufficient evidence to have him answer questions about violations of policy?
A. Yes.
Q. But you did not tell him which policies that you believed, or at least there was enough evidence of to let him know which particular policies. Correct?
A. Could you repeat the question? It was a double negative.
Q. Yeah, you're right. Even though you had

158

come to the conclusion that there was some evidence that there was a violation of policy, you did not tell Mr. Schvaneveldt in this Notice of Pre-Disciplinary Hearing which policies, all of them, that he was going to be answering questions about. Correct?
A. No.
Q. That's not correct?
A. That's not correct.
Q. Tell me what is correct, then. Because I don't see reference to all of the policies here with regard to each Corrective Action Matrix.
A. The question you asked me is if we didn't do it at all, and I said that we did. We did it on some; we didn't do it on others.
Q. Right. But you didn't do it on all of them?
A. Correct.
Q. And you did that for his convenience?
A. Yes.
Q. And the reason why is because you had done that in the past, and it had not resulted in any kind of a change. Correct?
A. We have never used the matrix in the past on Mr. Schvaneveldt.

159

Q. I'm not talking about that. I'm talking about notifying him as to which policies that he would have been accused of violating.
A. We gave Mr. Schvaneveldt I believe seven days, ten days after the notice of the pre-disciplinary hearing to ask us any questions he wanted. So if he had any questions on that, we would have been happy to answer that.
Q. So it was up to him to figure out what it is that you were accusing him of?
A. Mr. Schvaneveldt is aware of our policies, and I had documentation of that. So he would know what violation he already had done.
Q. I'm going to try it again. So it was up to him within seven to ten days to let you know, to ask you what policies you were accusing him of violating. Is that correct?
A. No. It was up to him to clarify any questions he had about the predetermination hearing letter.
Q. So the burden was on him to figure out what it is that you were asking?
A. No.
Q. Was the burden on you to make clear what it is that you were accusing him of?

160

A. Yes.
Q. And it is your position that that was made clear enough to him by this Notice of Pre-Disciplinary Hearing?
A. Clear enough with the caveat that he knew that if he had any questions of any portion of the predetermination letter or any of the processes, that he could ask us questions on what he needed to do.
Q. So you didn't see any need to give any more detail with regard to the allegations that were being made against him, especially with reference to every policy that he was being accused of violating?
A. No.
Q. Before sending the Notice of Pre-Disciplinary Hearing, did you review any policies and procedures of the department?
A. Yes.
Q. Which ones did you review?
A. I reviewed every violation that we listed as a policy violation. And I also reviewed the corrective action Policy 1017, I believe it is.
Q. 1017.
A. And I believe that's it that I can think of.
Q. Did you review 1016?

161

A. No.
Q. Why not?
A. It's not applicable.
Q. 1016 is not applicable?
A. It is not.
Q. Okay. Well, all right. Let's look at 1017, then. That's No. 3 here. On page 1 of 1017, we're looking at 1017.2 Policy. "It is the policy of the Department that supervisors administer Corrective Action in a corrective, progressive, and lawful manner."
A. What exhibit are you on?
Q. Page 1, 1017.2.
A. I'm sorry.
Q. Exhibit No. 3.
A. Okay, I'm on that.
Q. Policy 1017.
A. Okay.
Q. Third full paragraph down, 1017.2 Policy.
A. Okay.
Q. "It is the policy of the Department that supervisors administer Corrective Action in a corrective, progressive, and lawful manner."
Do you read that?
A. Yes.

162

Q. And then it has some definition about corrective, has some definition of progressive, and let's look at lawful.
"Lawful in that the Department will provide Due Process rights whereby employees are given reasonable notice and an opportunity for the employee to respond to allegations (see Policy 106)."
A. Correct.
Q. And it is your position that Policy 106 does not apply to his situation, even though it was Policy 1017 which refers to Policy 106 that you refer to in determining corrective action for Mr. Schvaneveldt?
A. Correct.
Q. How was it you get there?
A. So if I can find -- can you tell me what 1016 -- what is it? The due process part of the corrective action is doing the investigations based on accusations from anyone other than a supervisor. These accusations were directly witnessed by a supervisor, and we do have processes in place so that if the individual that has been -- actions taken by the supervisor, if they believe that that supervisor has any bias, they have a -- they have the ability to file a grievance. But the officers of our department

163

are -- act as the -- technically, they're the representative of the fire chief. So when they see something happen and they directly observe it, an investigation is not required.
Q. What if the supervisor is wrongfully accusing a firefighter of misdoing? Do you just take it on the word of the supervisor?
A. We have to believe that we have the right people in place through being sworn into a position that they are acting in good faith. And if, for some reason, that's not happening, the employee has the right to file a grievance, and then it would be investigated.
Q. Let's look at Exhibit 21, 1016. I'd like you to look at the third page of that. Down on the lower right-hand corner it says "Personal Complaints number and it's 143. Are you there with me?
A. Excuse me. Okay, yes.
Q. 1016.6.1, it's the second full paragraph down, "Supervisor Responsibilities."
A. Yes.
Q. "In general, the primary responsibility for the investigation of a complaint rests with the member's immediate supervisor." You would agree with that, correct?

164

A. Yes.
Q. In fact, you just told me that the department has to rely in good faith on the qualifications of a supervisor to act in good faith. Correct?
A. Yes.
Q. Let's read the next sentence. "If the supervisor is the complainant, is the ultimate decision maker regarding disciplinary action, or has any personal involvement regarding the alleged misconduct, the Fire Chief or the authorized designee will direct that another supervisor investigate the complaint." Correct?
A. Not in this case. It's not applicable.
Q. And that's because you had ultimate trust in the good faith of the supervisors who were bringing complaints against Gary Schvaneveldt. Is that right?
A. No. According to policy, if you read the first sentence in that heading, it says: "All allegations of misconduct will be investigated as follows." That's allegations of misconduct. The supervisors have the authority through their being sworn into the position to make decisions and to be the individuals that see what happened there. So

165

it's -- that whole section of that policy does not apply to any of the cases with Mr. Schvaneveldt.

Q. "All allegations of misconduct will be investigated as follows." Now, are you claiming that the allegations that were made against Gary Schvaneveldt --

A. They were not allegations.

Q. Can I finish?

A. Yeah.

Q. That the assertions, allegations, whatever you may want to call them against Gary Schvaneveldt that are found in Trakstar by his supervisors were not allegations of misconduct?

A. They were not. They were direct observations.

Q. And you have to trust that these direct observations are sufficiently true that there is no need to ask another non-supervisor supervisor to investigate the complaint. Is that your position?

A. Yes.

Q. And so none of the procedures that are set forth in 1016 are applicable to Mr. Schvaneveldt? Is that your position?

A. Correct.

Q. All right. And you make a distinction

166

between an allegation of misconduct and what you would call a direct observation of misconduct. Correct?

A. Depends on who you're referring to.

Q. I'm referring to a supervisor who, in your view, has looked at somebody's misconduct, directly looks at it, observes it, and says, I'm going to put something down in Trakstar about this. That's not an allegation of misconduct, under your view; it is a record of a direct observation of misconduct? Is that the way I'm supposed to understand this?

A. They are representatives of the fire chief. You brought up earlier that does the chief go around to every building to make sure everyone's up by 6:30. That's what the officer is for. They represent the chief. And when they witness something of misconduct, it even says in our policy they're expected to take care of it, and that's what they did.

MR. EDWARDS: That didn't answer a single word of my question. Let's read the question back.

(The pending question was read back.)

THE WITNESS: Yes.

Q. (By Mr. Edwards) Okay. Have you ever advised a captain or a battalion chief that they

167

needed to write up the misconduct of an employee, and if they did not, they would be written up?

A. No.

Q. Are you aware of any instance in which that has been done in this department?

A. No.

Q. Do you have an understanding of what the words "due process" mean?

A. Yes.

Q. What do you understand that to mean?

A. That an individual accused of any wrongdoing -- and are you talking within the department or generally?

Q. Let's talk about within the department. Those are words that are used in No. 1017.

A. Due process means that -- there's a few things to it. One is that when an individual is accused of something, they have a right to explain their side of the story, and they also have a right to challenge witnesses in the process.

Q. Do you agree that in order for an employee to exercise due process rights with regard to some assertion of misconduct by a supervisor, that the department is under an obligation to follow the requisites of Policy 106?

168

MR. GODFREY: I'm going to object to the question. He's asking for a legal conclusion on due process compliance.

MR. EDWARDS: I'm asking his understanding.

HEARING OFFICER: I'm going to sustain that. I mean, I don't understand what his understanding -- why that's important. Maybe you can explain it to me. It seems to me like my understanding is the one that's going to make a difference here, not his.

MR. EDWARDS: Well, yes. I -- I hate to characterize some positions that parties take as illogical, but it makes no sense to me what this witness is saying, so I'm asking for more information. As I understand what he's saying, 1016 applies only to allegations of misconduct that do not come from a supervisor. Because if a supervisor directly sees somebody doing something, then it's not an allegation of misconduct, it's simply an observation.

Now, 1017 says that due process rights need to be afforded in the event that there is some sort of a claim of misconduct, and so I'm trying to find out -- and it references 1016. So what I'm

169

trying to find out is does this witness have an opinion that 1016 somehow does not apply when an allegation of misconduct is made by his supervisor.

HEARING OFFICER: Maybe you should ask him that question, because that's --

MR. EDWARDS: I will ask. Okay. You're right. I'll try it again.

Q. (By Mr. Edwards) I'm trying to understand the position that you've taken here. Is it your position that a supervisor who observes misconduct directly cannot be a complainant under section 1016, under Policy 106?

A. No.

Q. That is not your position?

A. Could you rephrase it?

Q. Yeah. Let's look at 1016.6.1, second sentence. "If the supervisor is the complainant, is the ultimate decision maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct, the Fire Chief or the authorized designee will direct that another supervisor investigate the complaint."

A. Correct.

Q. Okay, let's break that down. If the supervisor has any personal involvement regarding the

170

alleged misconduct, they need to call in another supervisor. Do you understand that? Is that your understanding?

A. No.

Q. What do those words mean to you, then?

A. It means to me that combined with the complainant and the ultimate decision maker, which very few of our supervisors are the ultimate decision maker, that the ultimate decision maker is the fire chief, ultimately, if it goes to the level that we're at now. There are some instances where the ultimate decision maker is lower than that, which would probably go down to the deputy chief level.

Q. So the only supervisor, under your view, who can be -- well, whose actions would trigger 1016 would be either the -- well, both the complainant and the ultimate decision maker?

A. No. If you go on in the paragraph, it says if there is some type of a -- or if there is some type of a personal involvement with the individual of some type.

Q. Precisely.

A. Yeah.

Q. So the "or" would mean you've got alternatives there, right?

171

A. One alternative.

Q. Okay. So if we say, if the supervisor is, and we strike the first part of that sentence and we go beyond "or," if the supervisor has any personal involvement regarding the alleged misconduct, there's supposed to be another supervisor. Do you understand it that way?

A. No.

Q. Okay. All right. Is that the way you understood it at the time you sent the notice of prelitigation hearing?

A. I didn't send it. At the time it was sent, yes.

Q. As of January 5th, 2021, that was your understanding with regard to the due process requirements of 1016, correct?

A. Correct.

Q. All right. So was there any investigation with regard to the allegations that are found in Exhibit 1 against Gary Schvaneveldt?

A. Can you repeat that?

Q. Yeah. I've indicated that I'm using 1 through 7. I'm going to call them allegations. Was there any investigation of those allegations?

A. Yes.

172

Q. What investigation was there?

A. After the predetermination hearing with some assertations that Mr. Schvaneveldt made regarding some of the items listed in the predetermination hearing.

Q. So before the predetermination hearing, there was no investigation with regard to these allegations?

A. No.

Q. Okay. I'm going to try that again so it's not a double negative. Is it true that there was no investigation with regard to the allegations 1 through 7 of Exhibit 1 prior to the predetermination hearing?

A. So I probably should clarify. Are you asking investigation following 1016, or an investigation at all?

Q. Well, let's ask them each one at a time. Was there under 1016?

A. No.

Q. Was there any investigation?

A. No.

Q. So the allegations that are found in Exhibit 1 were based simply on the notes in Trakstar and the other things that were attached to the notice

173

of prehearing litigation [sic]. Is that correct?
A. Observations made by Mr. Schvaneveldt's supervisor.
Q. As evidenced by what?
A. Their direct observation.
Q. I understand that. But somehow it had to go from their eyes to paper. Correct?
A. Correct.
Q. And that's what I'm asking about. What paper?
A. Trakstar.
Q. Okay. So based specifically on what you found in Trakstar, and I think there were a couple of other notations there, all of which were attached to the Notice of Pre-Disciplinary Hearing, that's what you based these allegations on. Is that correct?
A. No.
Q. What is correct?
A. It was based on notes in Trakstar and the corrective action that went to Mr. Schvaneveldt regarding the events of December 4th.
Q. You lost me. It was based on Trakstar. Anything else?
A. You asked me if it was based on Trakstar, and I said no. It was based on Trakstar and the

174

written reprimand that was given to Mr. Schvaneveldt by Captain Maxwell.
Q. And that's not in Trakstar, is it?
A. There's notes of it made in Trakstar; but ultimately, the decision or the items listed in the pre-disciplinary notice came from both.
Q. Were there other sources of information upon which the notice of prelitigation hearing was based other than the attachments to the Notice of Pre-Disciplinary Hearing?
A. Let me see if I get your -- I'll answer it this way. The predetermination hearing was based on what was listed in the predetermination letter.
Q. Maybe I'm not being clear, and I apologize if I'm not. Let me make sure I understand this. There was a Notice of Pre-Disciplinary Hearing that was issued on January 5th, 2021. Attached to that document were notes from Trakstar, as well as a written reprimand, as well as what were known as witness statements, one of which was a -- it looks like a memo from Chief Moss to Chief Powers regarding a sick call. There is also on the back a note that says "previous corrective action," and there is also "performance evaluation core competencies 2020."
Were the allegations in the Notice of

175

Pre-Disciplinary Hearing based on anything other than what I have just told you?
A. The seven listed --
Q. It's a yes or a no. It's just not that hard. Was there anything else that you relied on in putting together the Notice of Pre-Disciplinary Hearing other than what I just told you? Trakstar, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E. Anything else?
A. Like I said, and I believe I answered the question, everything listed in the predetermination notice is what was considered.
Q. No, you didn't answer my question, and perhaps my question is not clear. There are seven allegations here.
A. Correct.
Q. They were based on something. Is the only thing they were based on Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E?
A. Yes.
Q. What? What else?
HEARING OFFICER: I believe he said yes to your question.
Q. (By Mr. Edwards) Oh. That's the entirety of what it was based on; is that correct?

176

A. Yes.
Q. Okay. All right. And let me make sure I understand this. Other than what it is that you have here in Exhibits A through E, there is no record of any investigation that was undertaken in addition to simply what it is that we have in Exhibits A through E with regard to the allegations in the Notice of Pre-Disciplinary Hearing. Is that correct?
A. I believe I answered that question.
Q. Well, let's try it again, because I didn't understand it.
A. Maybe you can make it more concise, then. Sorry. Could you please repeat the question?
Q. Yeah. Was there any investigation?
A. No.
Q. All right. Is it the policy of this department to discipline every violation of policy, no matter how large or small?
A. No.
Q. What is the policy of this department with regard to the discipline of violations and policy?
A. We have what we call a performance management where we try to bring people into compliance through coaching and counseling, training, onboarding, review of policies -- all those types of

177

things to make sure that people understand those items prior to us going to any type of a disciplinary action.

In addition to that, we try to give verbal warnings first, especially for newer people that may not understand the policy, or on a policy that's pretty obscure that maybe is not very well known by a lot of people. And we're looking for a change in behavior, just like the Corrective Action Matrix says. We're not looking to discipline people, we're looking to change behavior.

Q. I probably need a little bit of clarification. What do you consider to be discipline?

A. Discipline is anything punitive.

Q. Well, is a verbal reprimand discipline?

A. Not according to our policy.

Q. Written reprimand, is that discipline?

A. Not according to our policy. It's considered corrective action.

Q. Okay. Time off, would that be considered discipline?

A. Yes.

Q. Suspension, would that be considered discipline?

178

A. Yes.

Q. I'd like you to look at the Corrective Action Matrix in Exhibit 2.

A. Did you say 2?

Q. Yes. Let's look under offense No. 1, insubordination, non-emergency. First offense, written reprimand to 24-hour suspension.

Now, is it your testimony that a written reprimand is not disciplinary?

A. Can we go back to the policy, and I'll read you the definitions?

Q. I'm just asking you your opinion. Is it your opinion that a written reprimand is not disciplinary?

A. Correct.

Q. Okay. Would a 24-hour suspension be disciplinary?

A. Yes.

Q. If there is some sort of discipline that is going to be imposed on a member, in your opinion, are any due process rights implicated? Do you have to provide due process to an employee who is going to be disciplined?

MR. GODFREY: Objection. He's calling for a legal conclusion.

179

MR. EDWARDS: I didn't understand the objection.

MR. GODFREY: Kind of the same one. You're asking for a legal conclusion.

MR. EDWARDS: All right. I understand now. I apologize. It's allergy season, and my entire hearing is gone. I'm deaf for two months out of the year.

HEARING OFFICER: I'm going to sustain that.

Q. (By Mr. Edwards) All right. What kind of rights do you think should be afforded to an employee who is in peril of being disciplined?

A. Disciplined or corrective action?

Q. Let's talk about disciplined first, then we'll talk about corrective action.

A. I think everyone is entitled to due process.

Q. Would you agree that section -- or that Policy 106 is the method whereby under corrective Policy 1017 due process is afforded?

A. Sorry. Could you repeat that?

Q. Yeah. I mean, we've gone through this a little bit. Policy 1017 says that corrective action needs to be corrective, progressive and lawful.

180

Lawful talks about the department will provide due process rights whereby employees are given reasonable notice and an opportunity for the employees to respond to allegations, and then it says see Policy 106.

Do you see Policy 106 as the avenue that provides due process under the policies and procedures of this department?

A. Yes, under certain circumstances.

Q. Are there other circumstances in which due process is afforded where the policies that are laid out in 1016 are not used?

A. Yes.

Q. And what are they?

A. Predetermination hearing, the hearing we're in now for actions where two or more days are given without pay, or demotion without termination. In addition, one of the reasons that the chief doesn't get involved in any of the investigations of any type is so that he can be that first line arbiter if it's anything less than that.

Q. So is it your position that a pre-disciplinary hearing requires due process?

A. I think the pre-disciplinary hearing is due process.

181

Q. Okay. And let me just make sure I get this on the record. I think I may have asked this a couple times, but I want to make it clear on the record.

It is your position that prior to pre-disciplinary hearing it is not necessary to follow the investigative procedures that are set forth in policy No. 1016 with regard to allegations that are made against an employee. Is that correct?

A. It's not an all-or-nothing question.

Q. It's not what?

A. It's not all or nothing. You asked it as a -- almost as an "always" there. It depends on the situation. If it's directly observed by a supervisor, an investigation is not usually required unless we perceive to be some type of conflict of interest there.

Q. When you say "we perceive," who's "we"?

A. That would be most likely me or any of the administrative staff that can see anything where there's a potential bias.

Q. Can you tell me the ranks of those people that you're talking about?

A. Chief, deputy chief, deputy chief.

Q. So if any of those three people look at it

182

and say, we think this looks like it might be suspect, then it requires some sort of investigation?

A. Not required, but it may be initiated. But if you refer back to the item there, if we believe that there is some type of a conflict. For example, we have brothers that work here, we have brother-in-laws that work here. And while they typically wouldn't be supervising one of those individuals, they could certainly come across one of those guys in violation of policy. We would definitely not have those people do the investigation if one was required.

Q. Where do I find that particular standard in the policies and procedures of the South Davis Fire District?

A. You won't. It's best practices.

Q. Is there a policy that says, we will use best practices, and here's what they are?

A. No.

Q. So basically, it's whatever you think?

MR. GODFREY: Object to the characterization of the testimony.

HEARING OFFICER: Sustained.

Q. (By Mr. Edwards) Basically, it's whatever you and the fire chief and the assistant chief decide

183

needs more -- another look. Is that correct?

A. Generally. But we never were presented with those types of issues. We generally confer with counsel.

Q. So the ones who make a decision whether an investigation is warranted are the chief, deputy chief, deputy chief, and counsel?

A. No.

Q. Who else is there that makes that decision?

A. If there's a violation of policy or an accusation is made and an investigation needs to happen and there was no direct observation by a supervisor, then an investigation will ensue.

Q. I'd like to go back to No. 21 for just a second. 1016.6.1. "If the supervisor is the complainant." How is a supervisor possibly a complainant if they are not the direct observer? Do they make a complaint on the basis of something that they heard from someone else?

A. No. I can't think of an example.

Q. Well, you've told me that there has to be direct observation. Now, can you show me in any of the policies where that distinction is made with regard to a supervisor being a direct observer of a

184

violation?

A. Could you repeat -- I don't know what question you're asking me.

Q. I'm asking you to show me where in the policies and procedures of this department there is any mention that a supervisor need not commence or start or ask for an investigation if he is a direct observer of the violation of policy.

A. 1016.6.

Q. 1016.6?

A. Yes.

Q. "Disciplinary investigations. All allegations of misconduct will be investigated as follows"?

A. Yes.

Q. When you say "all allegations," are you making a differentiation between an allegation of misconduct and a direct observation of misconduct?

A. Yes.

Q. How is it made a determination as to whether an allegation is true or not so that you can determine whether the direct observation is true?

A. If it was not witnessed by an officer of the fire department, it's an allegation. If it's witnessed by the fire -- by an officer of the

185

department, they've been given that authority through the fire chief to take action.
Q. So an allegation that is made by a -- somebody outside the department, some assertion of wrongdoing, that's an allegation?
A. That's one form of it.
Q. Okay. Tell me the other forms.
A. If a firefighter made an allegation against another firefighter.
Q. I see. Is the supervisor, when he passes on an allegation from somebody outside the department, does that make the supervisor the complainant, or is the complainant a person outside the department who is making an assertion of misconduct?
A. The person outside the department.
Q. So what does it mean when it says if the supervisor is the complainant? Under what circumstances would a supervisor be a complainant?
A. I think that you could have one supervisor file a complaint against another supervisor, and at that point we would initiate an investigation.
Q. But never in an instance in which a supervisor claims to have directly observed a violation of misconduct by someone they are

186

supervising. Is that right?
A. Correct.
Q. Okay. You listened to Chief Stone's testimony earlier today, correct?
A. Yes.
Q. Is there any part of Chief Stone's conclusions that he gave to us under oath that you disagree with?
A. No.
Q. All right. I'd like you to look at Exhibit No. 25. And I am the one who actually put that table of contents together with regard to personnel evaluations of Gary Schvaneveldt. Do you recall signing off on Gary Schvaneveldt's personnel evaluations, the ones that are found here?
A. Recall in what sense?
Q. Recall in the sense that it's in the deep recesses of your memory.
A. I don't recall the actual time, but I know that I did it, yes.
Q. Okay. That's my question. You recall that you did it?
A. Yes.
Q. Did you take issue with any of the personnel evaluations that you signed off on?

187

A. No.
MR. EDWARDS: Okay. If I could have indulgence for two minutes just to talk to my client for a second.
HEARING OFFICER: Sure.
(Brief pause.)
Q. (By Mr. Edwards) With regard to Exhibit 25, do you recall any instance in which you required Captain Lane Price to mark down Gary Schvaneveldt before you would sign off on it?
A. I don't recall.
Q. Is it possible?
A. It's possible.
Q. Under what circumstances would you require that a captain mark down somebody's personal evaluation before you would sign off on it?
A. If they had notes in their Trakstar indicating that their performance didn't match, or any indication of behavior that would indicate that they didn't fairly evaluate the person, the individual.
MR. EDWARDS: That's all I've got for this witness.
HEARING OFFICER: Thank you. Mr. Godfrey.
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188

CROSS-EXAMINATION
BY MR. GODFREY:
Q. Do you have an opinion of what the administration of the department would look like if supervisors who witnessed misconduct or a policy violation weren't allowed to enter into any kind of corrective action, or if it was serious enough to enter into disciplinary action without bringing in another supervisor?
A. It wouldn't happen.
Q. You're familiar with Mr. Schvaneveldt's personnel file?
A. Yes.
Q. Are you aware of, have you seen any filing of any grievance regarding any Trakstar note or any disciplinary action that was taken against Mr. Schvaneveldt?
MR. EDWARDS: I've got to object on the basis of speculation, unless you want to lay some foundation as to how he would know that.
THE WITNESS: I'm very familiar with his file. There is nothing --
MR. EDWARDS: Wait. There's an objection.
MR. GODFREY: Stop. Stop. Stop.
HEARING OFFICER: Can you restate the

189

question for me, please?
MR. GODFREY: I asked him if he's aware of any grievance action in Gary's personnel file, and he testified just previous to that that he's aware of Gary's personnel file.
MR. EDWARDS: If that's the question, I withdraw my objection. That's not the way I understood the question to have been asked.
HEARING OFFICER: Okay, thank you. Go ahead.
THE WITNESS: There is no grievance in his file.
MR. GODFREY: I don't have anything else for Deputy Chief Powers.
HEARING OFFICER: Thank you.
MR. EDWARDS: I do have a couple of questions to follow up on redirect, then.
REDIRECT EXAMINATION
BY MR. EDWARDS:
Q. You just asked about what it would look like if it was required that a supervisor bring in another supervisor every time that there is some sort of a complaint. What would it look like if every time a supervisor did something that a subordinate didn't like grieved it?

190

A. Let me see if I get your question correct. You're asking if every time -- every time an individual was written down or action was taken against him, if they grieved every action that we took?
Q. Yes.
A. Is that what you're asking? I don't see necessarily a problem with it based on the number of corrective actions that are taken at all.
Q. So let me see if I understand this, then. You're saying it would be chaos if it were required that we bring in supervisors every time a supervisor had a complaint, but it would not be chaos if every time the supervisor wrote somebody up the employee grieved that. Is that understanding correct?
A. Absolutely.
Q. And that's based on the fact that you just don't have that many disciplinary situations between supervisors and the people they supervise, correct?
A. That and other items.
Q. That and what?
A. That and some additional facts.
Q. Tell me what the additional facts are.
A. Prior to any discipline taking place, I review the action being taken to make sure that it

191

conformed with department policy. In addition to that, most of our individuals are given some type of coaching and counseling prior to a corrective action taking place. So usually, in most cases, not all, but in most cases things are solved through a gentle reminder to the individual, and, at worst case, a verbal reprimand. Very seldom does it go to this level.
Q. Okay. So let me make sure I understand that, then. Most of the issues that we have are revolved on a nondisciplinary level, correct?
A. Correct.
Q. And only a few of them go to the disciplinary level, correct?
A. Correct.
Q. So why would it be chaos to bring in an independent supervisor if there's just not that many of them? How would that be chaos?
A. You're talking about chaos if we brought in an independent advisor with every corrective action that was taken?
Q. No. Every disciplinary action as you have defined discipline.
A. I don't -- it's not in our policy to do that.

192

Q. That wasn't my question. My question is if there's not that many of them, how would that be disruptive and chaotic? I believe you testified specifically to that issue.
MR. GODFREY: Your Honor, I think he's mischaracterizing the testimony.
MR. EDWARDS: Well, okay.
Q. (By Mr. Edwards) You know what, I'll withdraw it, and I'm going to ask you that question. I'm going to not ask you about every corrective action to bring in an independent supervisor. I'm asking you about a disciplinary action which, as you indicated, could be a written reprimand, maybe, but certainly time off, demotion, firing. Would it be chaotic to bring in an independent supervisor under those circumstances?
A. Not be appropriate.
Q. That wasn't my question. Would it be chaotic?
A. No.
Q. And it would not be appropriate why?
A. Because every employee is entitled to discretion as far as how much information gets out with corrective action being taken. And the less people that know about it, the better.

193

Q. How is it, then, that you are able to square that with 1016.6.1 in which there are instances, even under your understanding of this, in which another supervisor should come in and investigate?

A. That would most likely be some -- a member of the command staff.

Q. Does it say that in the policy?

A. Doesn't need to.

Q. It's simply understood?

A. I guess you would say that, yeah.

Q. Who understands that?

A. I think anyone who realizes there would be a conflict of interest would realize that we were going to take necessary steps to create the most fair situation for the employee.

Q. So, again, we have to place faith in the good faith of the supervisors and the command staff. Correct?

A. I would hope so.

Q. And it appears that the entire process here is based on assumptions, hope, and good faith?

MR. GODFREY: Objection.

THE WITNESS: No.

MR. GODFREY: That's not a question, and

194

it's argumentative.

MR. EDWARDS: You're right. I'll withdraw that. I've got nothing more for this guy.

HEARING OFFICER: Thank you.

MR. EDWARDS: I'd like to call Lane Price as my next witness.

LANE PRICE,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. Tell us about your background.

A. I started with Bountiful City Fire Department in 1988 as a part-time fireman. Was part time for nine and a half years. Went full time in 1997 and was promoted to a lieutenant in 2002, and then in 2005 promoted to captain, up until the day I retired April 1st of 2019.

Q. How many years did you have in fire service when you retired?

A. Just over 31 and a half years or so.

Q. Have you ever had a situation in which you were the supervisor for Gary Schvaneveldt?

A. Yes.

Q. How long?

195

A. Collectively maybe eight years or so. I don't recall off the top of my head exactly how long, but I'm guessing about eight years or so that maybe I was directly, you know, his supervisor or his captain, either at this station and then the station up on the Boulevard, Station 84.

Q. During the time that you supervised him, did you ever have any cause to make any type of complaint with regard to Gary Schvaneveldt?

A. Yes, I did.

Q. Tell me about that.

A. So, you know, I often talked to Gary just as we're talking now about corrective actions, behavior modifications and things of that nature, things that I would like to see him do better. So that was the way I would handle those things with him. And I've always seen positive results, you know, from those actions, just talking with him.

And then always, you know, we would do our reviews, do our employee evaluations that we did. And then through Trakstar, you know, when it would come back, you know, there was always something that, you know, we would have to correct or something like that through the years.

Q. How common was it when you were

196

supervising employees that you would have the same type of interaction that you just described with regard to Gary Schvaneveldt?

A. Repeat that one more time.

Q. Yeah. How common was it when you were talking to other employees that you had the same kind of interaction that you just described with regard to Gary Schvaneveldt?

A. With Gary -- or with other employees?

Q. Yeah.

A. I did that with all my employees. I felt like I did. I have an example of one. I had a part-time firefighter and a -- he was not a paramedic yet but he was an EMT. And they were on a call and they had fought over some individuals, or the way that care was being provided, and it got pretty heated not only in the ambulance but at the hospital. And when they came back to the station I pulled them both aside separately in my office at the station and then talked to both of them to find out what was their side of the story, and then called them in together and resolved the issue.

And, you know, I've done that with other employees as well, but that's just one example.

Q. Okay. Did you ever initiate a complaint

197

against Gary Schvaneveldt?
A. Not that I recall.
Q. Did you ever issue a complaint with regard to any employee that you oversaw?
A. Yes, I have.
Q. Without naming the firefighter or the person that you supervised, tell us about that situation.
A. I don't recall exactly. It's -- you know, it's probably been years ago, and I don't recall. I'm sorry.
Q. Okay. Did it only happen once in your career?
A. That I did that, no. It happened several times. I just can't recall the exact instances of those things.
Q. When you would make a complaint, what kind of -- I want to say "due process," but I don't want to get an objection. How is it that it was allowed that the person against whom you were making a complaint would be able to tell their side of the story?
A. I'm not sure if I quite understand your question.
Q. You make a complaint against somebody.

198

How it is that they are allowed to tell their side of the story?
A. How was it allowed?
Q. Yeah. How was it that it happened?
A. Through a process of -- you know, through -- you know, I know that one employee came to me with a complaint, if that answers your question. I had one employee that wasn't a direct employee of mine came in and stated that something had happened to him and wanted my opinion on something. And so I gave him an opinion in where he needed to go directly with that as a course of -- a recourse for him to resolve or to eliminate that problem. If that answers your question.
Q. Well, that's pretty close. I'd like to -- are you familiar with the policies and procedures, at least up till the time that you retired from the fire department?
A. I was pretty familiar with them. But that's over two and a half years ago or, you know, closely. And I'm not as familiar with them now. I'm sorry.
Q. Did you ever receive training or ever review policy No. 1016?
A. I don't recall that specifically, but in

199

our captains meeting we -- when new policies would come out, we would review those together as captains in our meetings. We discussed them and then -- you know, before they were implemented.
We would also send out, through a program that they had before I left, prior to me leaving there was a program that was sending out policies as they were either changed, updated, or whatever that we could review. And then we had to sign off that we understood them and then showing that we had read the policy and understood it.
Q. When you were an employee of the fire department, especially in a position of being a supervisor, did you ever have any discussions with other supervisors about the importance of treating all employees equally when it came to corrective action?
A. Yes, I believe I did. And it always came back to just being consistent across the board, treating the employees consistently and the same as far as policies were concerned.
Q. Did you ever encounter any instances in which certain employees were treated as favorites, where there was less discipline with regard to allegations of wrongdoing as opposed to other

200

employees?
A. I don't know if there was any way to prove that, but just sometimes the talk that goes through the station, there was always perceptions is the best answer I can give you, there were perceptions that that was happening.
Q. What were those perceptions?
A. I don't have specifics that I can give you today. I'm sorry. I don't recall specifics of individuals. If you're wanting me to call out certain individuals --
Q. No, I don't --
A. I just can't remember specifics. But I remember having those conversations amongst my peers. And when I say "peers," my captains that, you know, those things did happen occasionally. At least, that's what was perceived.
Q. Was there a consistency of the application of corrective discipline or corrective action among all of the captains, or did each captain have kind of his own way of doing things?
A. I believe that each captain had their own way of running their own station. You know, the way I ran my station was different than obviously the other 14 captains that were on the clock or, you

201

know, at the station. We all had our own strengths, own weaknesses. The way our own personalities were, the way we -- our own perception of what the policies and procedures meant to us, and then that's how we implemented those.

Q. Were you ever given any indication from anyone that Gary Schvaneveldt was a particular target with regard to corrective action or discipline?

A. At one point when I was a captain down at Station 85 in Foxboro before I came up here, I was coming up to be a captain at this station, and I was given a bunch of files basically on Gary Schvaneveldt. They were corrective behavior files and so forth. Those files, I was asked by my battalion chief, who was new at that time, to follow through and continue with that process.

I also had the chief at that time that was the chief of the department come in my office several times and ask me, you know, behind my closed door what I was going to do about those things. And I told him that when I came up or agreed to come to the station that I called Gary directly and asked him, you know, I'm going to be your captain; is there an issue that you have working for me? Do you have a personality conflict with me? He stated he did not.

202

Asked him if he would be willing to do things I asked him to do and follow policies and procedures and so forth. He said that he would. He committed to me that he would do those things. And then that's where I left it.

I told the chief at that time that I wasn't going to continue to follow those things or that path, because he was doing the things I asked him to do for me and follow the policies.

So I don't know if that answers your question.

Q. Well, yeah. Did you receive any kind of sanction -- well, did anybody tell you, you'd better follow through on this stuff that we gave you?

A. No; but I have been, kind of in a roundabout way with that question, I have had through disciplinary or write-ups, things of that nature, that, you know, if I didn't take care of this that I would be written up myself for not taking care of that. I had been told that.

Q. Who told you that?

A. I don't recall.

Q. Is it anybody who is in the command staff today?

A. I don't recall. I know it's been said to

203

me before. And it was multiple times, so -- but, you know, if I didn't take care of the problem or correct the problem, that I was part of the problem and that I would be disciplined as well.

Q. And did the correction of the problem entail writing somebody up or putting something in Trakstar?

A. Yes, or the -- whatever write-up system we had at the time, yes.

Q. What did you understand the purpose of that to be? Were there particular employees that it looked to you like command staff was trying to get?

A. I think there are certain employees that do have conflict with certain individuals, and I don't know if I'd say -- that's pretty strong to say that they're targeting or whatever. But I've always felt like if it walks like a duck and it talks like a duck, then it's a duck. So I don't know. That's not a very good answer. I'm sorry.

Q. Well, I want to ask a little bit about that. I mean, I want to talk about the duck if we can. We have a situation here where between August and December of last year there are numerous, numerous write-ups on Gary Schvaneveldt. Do you -- is that walk and talk like a duck, that Gary

204

Schvaneveldt was under the gun, they want to get rid of him?

A. It appears to me that it is. But not being here to actually witness and see that, I -- but it appears that it is from the outside.

Q. Are you aware of any instance in which a supervisor has put something in Trakstar that a subordinate did not like, and he either grieved it, filed a grievance, or put his own reply in Trakstar?

A. I've never heard that or seen that.

Q. Based on your past experience, if that had happened, do you have any idea what would have happened?

A. I don't -- I don't even know how to venture a guess to say what would happen. If that were to happen, you know, what would be the repercussions is what you're asking me?

Q. Yeah.

A. I don't know.

Q. I'd like you to look at Exhibit No. 25. These are personnel evaluations of Gary Schvaneveldt, and I believe that many of them were signed off by you as Gary's supervisor. Was there ever a time in which -- okay, for example, on page 5 of Exhibit 25, We have Lane Price 73.33 percent, Gary Schvaneveldt

205

76.67 percent, Section Score 73.33 percent. Tell me what those percentages mean.

A. If I remember correctly, those are self-evaluations. So my evaluation would be after the total score was given and then what Gary was allowed to score himself, and then that was the difference of the score. So his score would be 76.67 and mine would be 73.33, and the section score was the 73.33.

Q. Let's look at the next page, page 6. I think we've got the overall scores there, as you indicated, and then we have approvers, Dave Powers. Did he -- what does it mean that he approved that?

A. So after a process of going back and forth, once I would complete my evaluation, we would submit that in, and then it would have to be reviewed by the battalion chief. The battalion chief would either make additional comments or he would send it back to me to correct, either more description of the notes of the behavior or, you know, a positive or minus in the evaluation.

And then once that was approved, then it would go back to him. He would sign it, and then it would go back to Chief Powers who would do the same thing, and then he would either finalize it or send

206

it back, kick it back down.

Q. How good or bad a score is that 73.33 percent?

A. For not really remembering what the scoring, if it's three quarters or 75 percent, I would say that's a fair score, a good score.

Q. Let's look at that same exhibit, page 13. We've got you at the top with 76 percent, final score of 76 percent, and approved by Dave Powers. So a little bit of improvement since the last one, correct?

A. Yes.

Q. Do you have a general feeling as to what kind of employee Gary was?

A. I felt I did. I've known Gary since he was just a new part-time firefighter starting with Bountiful City, so I've known Gary a long time. He's very likeable, a very good -- I think a dependable employee. He would always go above and beyond, at least while he worked for me. You know, he would do all kinds of things -- I mean, obviously, everybody's not perfect. He had bad days as well, days that maybe he overslept or didn't complete his truck checks on time. But for the most part, Gary was a very good employee for me.

207

Q. How common was it that an employee might oversleep?

A. Well, it depends on where we were in our rotation. It could have been -- you know, I don't know if he has a sleeping problem. I don't remember ever asking if he had a sleep problem or not. I knew he went to bed late. In fact, that's not true. I remember him saying to me, I guess it was in 2018, that he did have some kind of sleep disorder a little bit; he had a hard time sleeping. But what would cause that is either you're up throughout the night on calls and you're just tired or, in his situation where he had small children, he was at home with his wife and trying to take care of their small baby or babies through the night, so he would often come to work tired.

Q. Did you write up the employees who did not comply with the sleep policy?

A. I don't recall ever doing that. I would usually just chat with them and say we've got an issue, if I felt like there was an issue. I would always try to resolve that before I sent it up to the battalion chief and try to resolve it with my own crew. So if I had a problem like that with my crew, I just took care of it and let them know that there

208

was a problem, and advised them we need to work on that problem.

Q. Okay. Do you find it extraordinary that Mr. Schvaneveldt was written up for oversleeping?

A. I don't find it unusual.

Q. Okay. I think those were the only ones that you were the supervisor on.

Have you ever had a situation in which an acting battalion chief told you that if you wrote up another employee, he would take you to lunch?

A. I've never had that, no.

Q. Never heard of that situation?

A. Yes.

Q. Tell me what you heard.

A. This was in maybe 2010 or 2011, there was an employee B.J. Davis that was at Station 85 in Foxboro, that he was told by -- he came and said something to me and said that this is what happened to him at the station, and that the captain had -- was going to write him up and threatened to write him up, and he almost egged him on to say, please let me write you up because I get a free lunch out of the deal. When I asked more questions about where that all started and how it started, it came from a battalion chief that said that to a captain.

209

MR. EDWARDS: Okay. That's all I've got of this witness.

CROSS-EXAMINATION

BY MR. GODFREY:

Q. Hi, Mr. Price. I'm sorry. Trying to manage a mask.

You were Gary's supervisor, I'm trying to guess, from about 2011, maybe, to 2018 or '19?

A. Till '19.

Q. Okay. Right until the time --

A. Yeah.

Q. -- you retired from the department?

Do you recall being involved or consulted with -- on a disciplinary matter involving Gary in about 2018?

A. Yes.

Q. What was that?

A. If it's the one I'm thinking of, it was -- we were en route to a fire call, and we pulled out. As we pulled to the intersection we looked, we cleared, and there was -- there was another battalion chief that was en route. He was the division chief over training, and he was responding. And Gary had pulled out, stopped, but then continued on and pulled out in front of him.

210

And at that time, when we got back to the -- I think we got to the fire scene, and he came over and start yelling at him. And then he also said that he didn't have his full PPE on at that time.

In regards to the PPE issue, we had discussed with our battalion chief, if you will, a workaround. Because the engine side with the steering wheel for the engineers is -- as you can see, I'm a big guy, Gary's a large guy. We get our bunker gear on and we get in there, and it's very tight. And to try to steer the fire truck becomes very cumbersome when you have bunker gear on, or I should say a coat.

So Gary had his pants on but didn't have a coat on when he was in that, and he was -- the workaround for us was to when you get on the fire scene, you would appropriately get that coat on. So it was not a safety issue when driving the apparatus, it was get us there first and get us there safe, but the workaround was to make sure that he had his full PPE on once we got to the scene.

That was the incident. That's the one I recall.

Q. Okay. Do you recall him being written up or being late to work ever?

211

A. Yes. Yes. Oversleeping was I think the cause.

Q. And do you recall another -- a written reprimand and a suspension for failure to perform assigned duties?

A. I don't recall that one offhand. I'm sorry.

Q. Okay. If I gave you a date, would it help at all?

A. You could try, but --

Q. February of 2018.

A. I don't recall. That doesn't ring my bell. Sorry.

MR. GODFREY: I don't have any other questions.

HEARING OFFICER: Thank you. Mr. Edwards, anything else?

MR. EDWARDS: I have nothing further. I would actually like to re-call Chief Powers. I just have two questions that I would ask.

HEARING OFFICER: You're still under oath.

DAVID POWERS,

re-called as a witness, having been previously duly sworn, was examined and testified as follows:

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212

FURTHER REDIRECT EXAMINATION

BY MR. EDWARDS:

Q. I want you to look at Exhibit 21, if you would. I'm looking at page 2, 1016.4.2, sources of complaints.

A. Sorry. Where are you at?

Q. Okay. We're in Exhibit 21, the second page in. Says 142 down at the bottom. I'd like you -- okay: Sources of complaints. Members of the public may make complaints. Any department member becoming aware of alleged misconduct shall immediately notify a supervisor. The supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct from a member that, if true, could result in disciplinary action.

A. Correct.

Q. I'm still sort of reeling from the testimony that you gave earlier. "Shall" was mandatory, correct?

A. Correct.

Q. So a supervisor shall initiate a complaint based upon observed misconduct.

A. Correct.

Q. Is that what you're saying?

213

A. Yes.
Q. Now, in initiating that complaint, there are requirements for what needs to be done to initiate a complaint. Correct?
A. Correct.
Q. Such as filling out a complaint form?
A. Sometimes. Depends on how the complaint -- if it's from the public, we have a complaint form. If it's a disciplinary action, you can see, if you refer to Captain Maxwell's written reprimand, it follows all the components of a complaint.
Q. Okay. I need to understand your interpretation of this in order to figure out what it is you were saying there. If a supervisor initiates a mandatory complaint based upon observed misconduct, is that supervisor a complainant?
A. Can you state that again?
Q. Yes. If a supervisor initiates a complaint, which he shall do based upon observed misconduct, does that supervisor become a complainant?
A. No.
Q. He does not?
A. No.

214

Q. Even though he is the person who is initiating the complaint based on his observation of misconduct?
MR. GODFREY: Your Honor, that's a characterization of this section that's not correct. It says "upon observed misconduct," but it doesn't say it has to be the supervisor's observation of misconduct.
HEARING OFFICER: Well, to be honest with you, I think we've been down this road before. I'm not sure why we're going down it again.
MR. EDWARDS: I'm going to object to that. I think it's just argument.
HEARING OFFICER: Tell me your question again.
Q. (By Mr. Edwards) I think I have the answer. But if a supervisor initiates a complaint based upon observed misconduct or -- well, let's talk about based upon observed misconduct. Let's presume that he is the person that observes the misconduct. Does he become a complainant, the supervisor?
A. No.
Q. If a supervisor initiates a complaint based on receipt from any source alleging the misconduct of a member that, if true, could result in disciplinary action, does he then become a complainant?
A. Could you repeat that?
Q. Yes. If a supervisor initiates a complaint based on information, receipt from any source, alleging the misconduct of a member that, if true, could result in disciplinary action, under those circumstances does a supervisor become a complainant?
A. No.
MR. EDWARDS: Okay. That's all I've got.
HEARING OFFICER: Okay. I believe you're done.
MR. EDWARDS: I would call Paramedic Shafto.

MICHAEL SHAFTO,
called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:
Q. Could you state your name and spell your last name for the record, please.
A. Michael Shafto, S-h-a-f-t-o.
Q. Give us your background, if you would, with the fire service.

216

A. I started with South Davis Metro Fire in October of 2007.
Q. What positions have you held?
A. I've been a firefighter, functioning as a paramedic since I started.
Q. Have you ever had occasion to review the Trakstar notes that are attached to the Notice of Pre-Disciplinary Hearing that was given to Gary Schvaneveldt?
A. I have not. I was able to -- or I know the notes that I put in there, but with my authorization within the program I'm not able to see anything else within that program.
Q. Have you reviewed those at all?
A. Not recently, no.
Q. Okay. I'd like you to look at Exhibit No. 1. This is the Notice of Pre-Disciplinary Hearing that was given to Gary Schvaneveldt. The first three and a half pages that commence on page 10, dated December 31st, 2020, can you see those?
A. Exhibit C, Trakstar notes?
Q. Yes. Exhibit C, Trakstar notes --
A. Yes.
Q. -- December 31st, 2020, Shafto?

217

A. Correct.
Q. All right. There's three and a half pages there that you wrote. Have you read those recently?
A. Not recently, no.
Q. Why don't you take a look at them, and then tell me if that is what it is that you wrote.
A. Without reading them word for word, it does look like --
Q. I'd like to ask you about specific language that you used in there.
A. Okay.
Q. In writing this, do you consider that the words that you used were courteous and professional?
A. Not in their entirety, no.
Q. You indicate in there that you were able to -- this is in 2020 -- you were able to reflect on previous experiences from 2017. Do you know what you were referring to there?
A. Back in 2017 Captain Lane Price was out on FMLA leave, and I had the similar opportunity to go up and be the acting officer while he was out on leave.
Q. How long were you -- in that position, were you a supervisor of Gary Schvaneveldt?
A. Yes. I'm not sure on the dates on that.

218

Q. Okay. Well, I guess the question I've got is during that time, were you empowered to write Trakstar notes with regard to Gary Schvaneveldt's actions?
A. Yes.
Q. Did you ever do so within that entire time?
A. In 2020, or 2017?
Q. 2017.
A. I did not.
Q. Why is that?
A. I did not take any notes at that time because of the working relationship and the dynamics of him outranking me as an engineer and me being a firefighter.
Q. So you were scared to put down anything?
A. I wouldn't say that I was scared, but I was definitely trying to preserve a working relationship that we would need to go forward and be able to function together within the department, being on the same shift.
Q. And December 31st, you no longer had any interest in preserving a working relationship?
A. I do have an interest in preserving a working relationship. Not taking any notes in 2017, I should have taken those in 2017. And to come back three years later and see the same behaviors, I wanted to ensure that I was taking notes of interactions for myself.

219

Q. Did anyone instruct you to make notes in Trakstar with regard to Gary Schvaneveldt?
A. There were instances where I was instructed to put notes in there, yes.
Q. Who instructed you to do so?
A. Chief Powers, Deputy Chief Powers.
Q. Of the materials that were provided -- oh. Did Chief Matshu (phonetic) ever instruct you to make notes with regard to Gary Schvaneveldt?
A. Yes, he did, once.
Q. If you look at Exhibit 22. This is my graphic, but I noted every issue that was raised in the Notice of Pre-Disciplinary Hearing. And I note that you made notes that ultimately were used on August 29th, September 22nd, October 11th, October 12th, October 18th, October 29th, November 21st, November 28th, December 22nd, and December 31st. Do you recall making any other notes in the period between July 2020 and the end of December?
A. Without seeing what the reference is for these notes, there were other notes that I didn't put

220

in there with positive things that Gary had done as well.
Q. Do you have any explanation, and perhaps it's not for you to make a determination, as to why those positive things didn't make their way into the Notice of Pre-Disciplinary Hearing?
A. I do not.
Q. What kind of positive things did you say about him?
A. Specifically, I can recall one note that I put in there regarding the amount of work that he had done organizing the Association Halloween party at the Cross E Ranch.
Q. Okay. Let's look at your note of December 31st, 2020. In the second paragraph there it says at the bottom of page 10, "During my time with Engineer Schvaneveldt, I experienced pushback multiple times a day for basic tasks that included waking up to morning tones, proper uniform, proper PPE including wearing a mask, and completing other parts of the duties outlined in his job description, such as PSTrax, training or anything that doesn't align with his ideals."
Did you note all of those times that you experienced pushback in Trakstar?

221

A. I did not.
Q. Why not?
A. I don't feel that you could document every interaction, every time, effectively.
Q. Why did you feel the need to document the ones that you did document?
A. The ones that I did document were typically after I had already spoken with him and see an ongoing pattern, or a pattern of behavior that I experienced back in 2017.
Q. I'd like to go to the next paragraph that starts, "When I have talked to Engineer Schvaneveldt." Do you see that?
A. I do.
Q. "His attitude appears to show little self-accountability or motivation to improve or to meet minimum standards. He has always expressed self-justification in his actions and believes he knows what is in the department's best interest."
Now, you don't give any examples of that. Why is it that you didn't do that?
A. I don't know.
Q. You say, "He has always expressed self-justification in his actions." Is that true, always, every time, 100 percent of the time?

222

A. I guess there's not always and always, never and never.
Q. So the answer would be no?
A. No.
Q. "A classic example of this thought process is when we were talking as a crew about the Governor's mask mandate, which he is very against, and he asked me, 'What would you say if you were in Smith's shopping and saw me without a mask and open carrying a gun?' My response was why he would even think it was appropriate to act that way just to antagonize people and to make them feel uneasy. He replied that he wouldn't be antagonizing people; he would only be exercising his constitutional rights as an American."
Is that a conversation that you had with him?
A. Yes.
Q. And in that conversation was he expressing anything other than his opinion?
A. No.
Q. In fact, he was talking about something that might occur, or a hypothetical that could occur outside the station. Correct?
A. Correct.

223

Q. And you questioned it, you disagreed with it, you thought that it might antagonize people. Correct?
A. I felt that the situation presented was antagonistic, yes.
Q. Why did you feel compelled to put this in a report, then? There had been a discussion, you two disagreed about something; he expressed an opinion, you expressed a separate opinion. Why is that in Trakstar?
A. Just common interactions between us where he would present a hypothetical situation or agree with a policy or a standard and pose questions almost as a -- antagonistic to why it was wrong.
Q. In your view, Mr. Schvaneveldt has a right to an opinion that might be wrong. Correct?
A. Absolutely.
Q. As do you?
A. Yes.
Q. All right. Then you also follow that up with other examples of his poor professional work presence. Now, when you say other examples of his poor professional work presence, are you talking about in addition to the poor professional work presence that you just talked about, him expressing

224

an opinion?
A. There are several other notes within Trakstar outlining his poor professional work.
Q. We'll get to those. But I'm just wondering if you are referring to this difference of opinion or whether you were talking about other matters.
A. I think if you tie it in to where he's continually looking to push boundaries and test everyone around him, that it does tie back into the hypothetical situation within that paragraph.
Q. And you followed it up with, "This type of behavior is common in toddlers and is a management vacuum." What type of behavior? The type of behavior in which he poses a hypothetical about carrying a gun in Smith's?
A. With currently raising a five-year-old, I routinely see where a five-year-old knows what an expectation is and will continually push to see if that is still the expectation.
Q. Do you consider it professional and courteous to compare Gary Schvaneveldt with a toddler?
A. I do not think that it's professional or courteous, but I do think that it's accurate.

225

Q. And you felt compelled to put it in there?
A. Yes.
Q. I see. You indicate a little later, it's on page 13 at the bottom -- I mean, it says page 13 at the bottom. I'm looking at the top.
"The most significant changes that I have personally observed since my previous experience managing Engineer Schvaneveldt shows that he is currently more disgruntled with the administration and rebellious towards the policies and procedures."
Are you talking about he's more disgruntled in 2020 than he was in 2017?
A. Yes.
Q. "I've seen an overall increase in his sense of entitlement has resulted from his internal justifications and belief that he is one of the smartest, intelligent, and able employees at South Davis Metro Fire."
That just bugged you, didn't it, that he thought he was intelligent and smart and able. Correct?
A. No. I very much so feel that he is very intelligent and very smart and very able.
Q. But you believe that that gives him overall sense of entitlement?

226

A. He has a justification for not wanting to follow a policy or do a truck check that is above and beyond what the policy is. And --
Q. Well, I want to talk a little bit about the sense of entitlements and being smart, intelligent, and able. You say later, "These problems have been compounded by an ongoing lack of management the Engineer Schvaneveldt has had from previous officers."
Who are you talking about who were not able to -- they lacked management?
A. Obviously I'm not, as a firefighter, entitled to corrective action or discipline within the -- within the department. I know that I have seen multiple instances of problems that are ongoing for years, including -- one that stands out would be, you know, a backing incident.
Q. Well, let me interrupt you for just a second. Are you talking about lack of management here? That's what I'm asking you about. You say that there's been an ongoing lack of management, and this lack of management is largely due to his ability to identify and pursue captains that have not held him accountable for meeting the minimum standards of the department.

227

Now, back to my question. Who are you talking about?
A. Captain Lane Price, Captain Rich Alley immediately come to mind.
Q. Okay. And those captains should have done something differently than they did in managing Gary Schvaneveldt?
A. I guess I don't know what their steps that were taken. But the behavior was never corrected.
Q. If you didn't know what steps they had taken, how can you make a judgment as to whether there was a lack of management?
A. Just based upon my observations of continued actions.
Q. You didn't note in here what effective management would have been, did you?
A. No.
Q. But you did go on to say that he "has made it very clear with his actions that he resigned as an employee years ago and transitioned into merely occupying a position based on his need for a paycheck." What are you talking about?
A. His position as an engineer is to ensure that the fire engine and the equipment on it are ready to go at the beginning of shift. And he's made

228

it very clear that that is not his responsibility, that that is not his job, that it's the job of the off-going crew to ensure that the equipment is ready for him, and that he -- he doesn't have to do anything. He only has to make sure that whatever he uses gets replaced for the next crew.
Q. And that is evidence to you that he made it clear that he resigned as an employee years ago and transitioned into merely occupying a position based on a need for a paycheck?
A. As an employee, yes.
Q. Have you ever had that discussion with him?
A. I have had discussions with him about not doing truck checks, and that was his answer.
Q. Have you had a discussion with him in which you said, it looks to me like you resigned as an employee years ago, and you're just showing up so you get a paycheck?
A. I don't know if I've had that specific conversation with him.
Q. If you didn't have that conversation with him, why did you put it into Trakstar?
A. Because that's my observations.
Q. Do you believe that every observation that

229

you make with regard to other employees is something that Trakstar is the appropriate forum to air?

A. I think it would depend on the observation. But not all of them, no.

Q. Well, how about the allegation, "Engineer Schvaneveldt is a management nightmare, and I hope that I never have to experience another employee like him in my career"? Did you consider that that might be actually somewhat harmful to Mr. Schvaneveldt?

A. I did. And --

Q. Did you intend it to be harmful?

A. I did not. This is my -- this note from December 31st, I felt that I needed to put something together to kind of tie all of the other observations that I had had since July that I was up there. Because the majority of my other notes were observations and conversations, and by putting them all together, I felt that it would -- that it needed something to tie it up together.

Q. Did you think that calling him a manager -- management nightmare, that that would pull everything together?

A. I think that is -- that's my feeling after being up there and being assigned to manage him for that 15 weeks.

230

Q. How often do you put your feelings down in Trakstar?

A. Not -- not as often.

Q. Have you in other instances said similar things about other employees --

A. No.

Q. -- in Trakstar?

A. No.

Q. This is the one and only time?

A. That I'm aware of, without being able to go back and look at ten years' worth of notes.

Q. How about this notation, "Engineer Schvaneveldt is a deceitful, insubordinate employee and is a management and energy drain for anyone associated with him." Professional and courteous?

A. No.

Q. Helpful in somehow tying together all of your observations since July?

A. No.

Q. Aware that this might, if read by the chief or by the deputy chief, be somewhat harmful to Engineer Schvaneveldt?

A. Potentially, yes.

Q. You didn't care; is that right?

A. It was based upon the observations and the

231

feelings that I felt while I was up there.

Q. I'll try it again. You didn't care if it would be harmful to him, did you?

MR. GODFREY: Objection. Argumentative. It's also asked and answered.

MR. EDWARDS: It's a yes-or-no question. I haven't heard a yes or no.

HEARING OFFICER: You can go ahead and answer.

THE WITNESS: Yes.

Q. (By Mr. Edwards) I'd like you to look at October 23, 2020.

A. October 23rd, 2020?

Q. Yeah. At the bottom it says page 16.

A. Okay.

Q. Are you aware that one of the items that was brought up in Engineer Schvaneveldt's pre-disciplinary hearing was that he was sleeping through some training?

A. Not until recently.

Q. Okay. You note that Gary was asleep in the 84 recliners. I'm going to assume that has some meaning, but there's not actually 84 recliners. Am I correct?

A. Yes. Well, Station 84. Correct.

232

Q. I see. "In full recline mode. Both Meg -- " Who's Meg?

A. Firefighter Megan Knowles.

Q. Okay. " -- and I woke him up several times but he would just go right back to sleep. This was very frustrating and unprofessional. I can accept that we all doze off in training from time to time."

Have you ever dozed off during training?

A. Yes, I have. Yes.

Q. Ever been written up for it?

A. No.

Q. "Most employees will do something to show they care and not just go right back to sleep."

Are there any notations in your file with regard to your dozing off during training?

A. Not that I'm aware of.

Q. What kind of counseling did you give to Gary Schvaneveldt with regard to the issues that you raised here that we just looked over?

A. There was nothing that I put in here that I did not talk to him directly about.

Q. Did you talk to him about dozing off during the training?

A. Yes.

233

Q. Was it resolved?
A. I don't know.
Q. As far as you were concerned, was it resolved?
A. I don't feel like I was with him long enough to be able to assess that.
Q. How long were you with him?
A. I left beginning of -- beginning of December. I don't have the exact dates.
Q. Well, you started working with him this second time when? In July?
A. Roughly, yes.
Q. So basically, you were with him for six months?
A. Fifteen -- fifteen weeks. It was while his captain, Captain Sayre, was at crew school.
Q. Fifteen weeks, so that's more like five months. And during that time you were able to put things in his Trakstar numerous times.
Again, have you got it in for Gary Schvaneveldt?
A. Absolutely not.
Q. Do you want to see him succeed?
A. Yes.
Q. That's why you said that he was a

234

management nightmare, deceitful? Do you see those words as being helpful in helping someone succeed?
A. I feel like sometimes it's helpful for people to hear the honest opinions of somebody else.
Q. "Deceitful, insubordinate employee that is a management and energy drain for anyone associated with him." Are those words intended to help him succeed?
MR. GODFREY: Objection. It's argumentative. It's asked and answered.
HEARING OFFICER: It's been asked and answered. Sustained.
MR. EDWARDS: I've got nothing more.
CROSS-EXAMINATION
BY MR. GODFREY:
Q. Mr. Shafto, in your Trakstar notes you make a note on September 10th about failure to meet medical testing.
A. September 10th?
Q. Yeah. Do you have that in front of you?
A. I don't have a note for September 10th, unless they're out of order.
MR. EDWARDS: There's no note from September 10th. I think you might have the wrong date, Counsel.

235

Q. (By Mr. Godfrey) Okay. A note on September 22nd, failure to wear a proper uniform. Do you see that?
A. Yes, I do.
Q. Will you take a quick look at that?
A. Yes.
Q. Is everything in that accurate?
A. Yes.
Q. You have a note on September 28th, failure to follow directions in vehicle checks. Will you take a look at that, please.
A. I don't have a note for September 28th.
MR. EDWARDS: Which date?
MR. GODFREY: I'll withdraw that question.
Q. (By Mr. Godfrey) A note on October 11th regarding vehicle checks.
A. Yes.
Q. Is everything in that note accurate?
A. Yes.
Q. A note on October 18 regarding vehicle checks.
A. Yes.
Q. Everything there is accurate?
A. Yes.
Q. And a note on October 23rd, sleeping

236

during training. You have dozed off during training before?
A. Yes, I have.
Q. Have you ever laid out in a recliner during training?
A. No.
Q. A note on October 29th, not wearing proper personal protection? Look at that quickly.
A. Yes, I recall the situation.
Q. Is everything in that accurate?
A. Yes.
Q. There's a note on November 21, backing a vehicle without a backer.
A. Yes.
Q. Is everything in that note accurate?
A. Yes, it is.
Q. A note on November 28th regarding Mr. Schvaneveldt being out of uniform.
A. Yes.
Q. Is everything in that note accurate?
A. Yes, it is.
Q. During the time that you were supervising at Station 84, did you have similar issues with other firefighters?
A. No.

237

Q. Would it be accurate to say your problems with Gary were unique?
A. Yes.
Q. Tell me why -- I'm going to start over. Do your -- does your note of December 31 -- you've indicated you think that it wasn't professional or courteous?
A. Yes.
Q. There was one part of that note that you stated, "but it's accurate"?
A. Yes.
Q. Is the entire December 31 note as it relates to Gary's conduct -- you characterized his conduct as being insubordinate. Is that an accurate assessment, based on what you experienced?
A. Yes, it is.
Q. Is his -- was his conduct in this period of time in 2020 markedly different from what you observed and dealt with when you were supervising in 2017?
A. I feel like the majority of it was the same occurring type of problems from '17 to '20, but that he -- he was less happy or more disgruntled with the department in '20 than he was in 2017.
MR. GODFREY: I don't have any further

238

questions for Officer Shafto.
REDIRECT EXAMINATION
BY MR. EDWARDS:
Q. Define insubordinate for me.
A. Being given an order or a direction to do something, being able to carry that out and refusing to do it.
Q. And you believe that he was insubordinate how many times?
A. I don't have a tally mark to know that.
Q. Let me ask, one time? Five times? A hundred times?
A. I know that there are days where I would ask him three or four times to enter truck checks, and he would not complete that. So I can't dare to have a tally mark of how many times that would happen.
Q. You asked him to do something, he didn't do it, and you consider that to be insubordinate?
A. For -- for completing his job in an assigned time and saying we need to get our truck checks in, go do your truck checks, and not having truck checks done I would say could borderline on being insubordinate.
Q. Borderline insubordinate. Is that what I

239

just heard you say?
A. Did say that, yes.
Q. I want to ask about truck checks. Now, I do not understand how a fire department works. As I understand it from your notes here, there is a check for day one and a check for day two. Is that correct?
A. There's -- yes.
Q. Are the checks for day two the same as the checks for day one?
A. No, they are not.
Q. How are they different?
A. The day one check is far more complete and more aligns with, like, a full check of all of the equipment that is on the engine.
Q. Okay. And tell me --
A. A day two check would be a quick check where you've been there for 48 hours, you know that everything was good last night, and you're going down and you're making sure that there wasn't -- we've found batteries that have -- car batteries that have malfunctioned overnight, or a battery switch gets left on and so you have to jump start an engine, things like that that you're looking for to ensure that it's still ready to go on day two.

240

Q. Have you ever had a discussion with Gary Schvaneveldt about the fact that checks for day two need not be as thorough as checks for day one?
A. It's outlined within the PSTrax program of what is required.
Q. Okay, I'm going to try it again. Have you ever had a discussion with Gary Schvaneveldt about the fact that checks for day two need not be as complete as checks for day one?
A. No.
Q. And you rely on the policy that you just referenced, correct?
A. Yes.
Q. How important is it to you that the department follows its policies and that the employees of the department follow the policies?
A. I think that it's important.
Q. Would that be the case with regard to personnel complaints, for example?
A. Yes.
Q. Were you ever instructed that in order to make any kind of a complaint about Gary Schvaneveldt that you needed to go through a complaint procedure?
A. No.
Q. Have you ever received any kind of

241

instruction with regard to how it is that you should place items in Trakstar that are negative toward Gary Schvaneveldt?
A. No.
Q. Have you ever been told to write him up?
A. No.
Q. I think you indicated that you have fallen asleep during training but you weren't in a recliner. Is that correct?
A. Okay.
Q. Is the issue the recliner as opposed to the dozing off?
A. No, it's not.
Q. So if that's not the issue, then you're willing to concede -- in fact, I think you said all of us doze off during training once in a while; you just need to do better, you need to take it seriously. Correct? I mean, those aren't your exact words, but was that the attitude?
A. Yes.
MR. EDWARDS: All right. It's all I've got.
HEARING OFFICER: Anything else?
MR. GODFREY: No.
HEARING OFFICER: Okay, thank you.

242

MR. EDWARDS: Can we take a short break?
HEARING OFFICER: Yes. Let's take five minutes.
(Recess from 3:22 p.m. to 3:30 p.m.)
MR. EDWARDS: I call Chad Willey.
CHAD WILLEY,
called as a witness, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. EDWARDS:
Q. Captain Willey, would you state your name and spell your last name for the court reporter.
A. Chad Willey, W-i-l-l-e-y.
Q. How long have you been with the fire department?
A. Thirty-four years, give or take a year.
Q. I'd give or take a year. Have you ever been a supervisor over Gary Schvaneveldt?
A. I have been.
Q. What was your experience with him?
A. Boy, it was a long time ago. My experience was yes, all of the above. Gary was -- he's an excellent firefighter, excellent EMT. Very strong willed, free thinker. He was a guy that required a lot of my attention during the time I was his supervisor.
Q. When was that?
A. The last time I was his supervisor was in 2004. I was his supervisor at the time immediately preceding the combining of the two fire departments in '05.
Q. So basically, 17 years ago?
A. Yes.
Q. Okay. I want to ask you specifically about a conversation that you and I had. Have you ever been privy to any conversation in which a member of the command staff said that they wanted to get rid of the old guard so that they could bring the new guys in?
A. Something to that effect, yes.
Q. Who said that?
A. Boy. I do know that Chief Powers said that. I don't know if anybody else did in addition to him or not.
Q. Do you know when that was said?
A. Oh, it was in a captains meeting. I cannot -- I couldn't pinpoint it, but I could say -- I'm going to make an educated guess -- within the last year.
MR. EDWARDS: Okay. That's all the questions I have.
CROSS-EXAMINATION
BY MR. GODFREY:
Q. You're a captain?
A. Yes, sir.
Q. How long have you been a captain with the department?
A. Since 2002.
Q. The context of the comment you just spoke about with Mr. Edwards was a captains meeting?
A. Yes, sir.
Q. How many captains are there in this department that are older than you, Captain Willey?
A. There are none.
Q. And so how did you take that comment?
A. Well, I -- I took it a little personal at first.
Q. Sure.
A. Yeah. So I actually raised my hand and let the administrators know that they were also old guard.
Q. Correct. Have you felt threatened in your job since that was stated?
A. I have not felt threatened.
Q. Did you understand that comment to be in

245

relation to the department in general, or in relation to I guess what I would call the officers of the department?

A. I -- I took it to be the department in general, actually.

Q. And have you seen action taken that makes you believe that there's a concerted effort to I guess rid the department of older firefighters?

A. No, sir.

Q. So that comment having been made, can you give any context to that?

A. I can give some context. As we've discussed it in recent years, the fire department has initiated a new training program with new firefighters, and the training level of new firefighters is far superior to what we had 35 years ago. The training program you go through with -- besides fire and medical training, it goes to things such as command functions, respect for command positions and so forth. And we believe, and I've seen that our level of professionalism has increased. And to put that in context was that increased level of professionalism that we didn't have 35 years ago, that the department will only improve with the newer people coming in.

246

MR. GODFREY: That's all I have.

HEARING OFFICER: Anything else, Mr. Edwards?

MR. EDWARDS: Yes.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q. Have you ever been given -- been privy to any kind of conversation in which there was a comment made about the old Bountiful guys as opposed to the South Davis guys?

A. Well, there have been some informal conversations about that, yeah. Maybe "conversation" might be a strong word, but maybe comments.

Q. As a captain, are you given training on the policies and procedures of the department?

A. On an as-needed basis, I guess. If I ask for training and clarification on things, then we get training. If there's something -- not as -- not as a every policy every time, no.

Q. Have you ever received training with regard to personnel corrective action?

A. Yes.

Q. Have you ever received training that stated that as a supervisor, the only time that you needed to file a formal complaint was in a situation

247

in which you were not the direct observer of some sort of a violation of policy?

A. That's not the way I understand it.

Q. How do you understand it?

A. I understand it that if -- if I see or hear of improper conduct, regardless of who it's from, that I can start that process forward.

MR. EDWARDS: Thank you. That's all I've got.

HEARING OFFICER: Anything else? Okay, thank you.

MR. EDWARDS: I would ask for Captain Sayre.

RILEY SAYRE,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. As with everyone, could you tell us your name and spell your last name, please, for the court reporter.

A. Yeah. Riley Sayre, S-a-y-r-e.

Q. How long have you been with the fire department?

A. Eighteen years.

248

Q. Have you been in a position where you were a supervisor of Gary Schvaneveldt?

A. Yes.

Q. I want you to look at Exhibit No. 25, please. These are personnel evaluations of Gary Schvaneveldt. Have you ever done a personnel evaluation of Gary?

A. Yes.

Q. I want you look at page 25 of Exhibit 25. This is for a period that ended on the 29th of July of 2020. Do you recall doing this personnel evaluation?

A. Yes.

Q. How long did you supervise Gary?

A. I believe it was a full year, about a year.

Q. On page 30 of Exhibit 25, we have an overall score here that you gave of 74.54 percent, with a final score of 74.54 percent. How does that compare, in your view, with other firefighters? Is it pretty much average?

A. Yes.

Q. All right. Are you instructed to indicate that you might have any personnel issues or matters that need corrective discipline in a -- in a

personnel evaluation?
A. I believe it could be brought up there, yes.
Q. Did you make any such notes in this file with regard to Gary?
A. With regard to what?
Q. With regard to Gary Schvaneveldt.
A. As far as -- would you repeat the question?
Q. Yeah.
A. I'm sorry.
Q. Did you ever note any kind of an issue that would lead to any kind of discipline or corrective action in your personnel evaluation of Gary?
A. Yes.
Q. What did you note?
A. I noted a time where he didn't wear his proper PPE on a fire call that we had. I believe there was another incident. I'd have to read through it to refresh my memory. But I know that was one offhand I do remember.
Q. I'd like you to look at Exhibit 1, if you would, please. We've talked a lot about that. Have you been sitting through this entire proceeding

today?
A. Yes, I have.
Q. There are Trakstars notes that we find here. I'd like to look at a Trakstar note for December 15th of 2020.
A. Which page is that?
Q. Well, it says on the bottom page 14 in the lower left-hand corner. You note here a whole -- well, it's kind of long -- "today was my first day back with Gary since being away at the recruit academy. I had closed-door sit-down with Gary today about the last few months and his notes in Trakstar."
Before meeting with him, did you review his notes in Trakstar?
A. Yes.
Q. What is it that you were concerned about talking to him about?
A. All of his previous Trakstar notes.
Q. "Gary had not seen any of the notes and has not logged into Trakstar since his last review in July."
Is that common, that an employee doesn't look at Trakstar all the time?
A. For me personally, yeah, that's not very common. Usually people look, from what I've

experienced.
Q. "We talked about each note and the recurring themes that have been taking place. There were" -- I'm going to go ahead and presume -- "there were multiple notes about late PSTrax, sleeping in, not wearing uniform, not wearing mask, and insubordination."
This is the part that I want to look at. "Gary was made aware that this is his last warning. He is on thin ice and is being watched very closely."
What did you mean by that?
A. I was trying to make it very clear to Gary that there is a pattern here of things that he is not doing correctly at that time. I wanted to make it very specific to him that I'm letting him know, we want to see you succeed; this is your final warning to start improving and correct your actions.
Q. When you say it's the final warning, had you received any kind of information from anyone else in the administration that this was it, this was a final warning for Gary?
A. I had had talks with the administration prior to coming back to work with him.
Q. Who did you talk to?
A. Chief Powers and Chief Stewart.

Q. What did they tell you with regard to Gary?
A. We talked about the pattern and him not being able to correct his actions. So I felt like it was my responsibility when I came back to make sure that we could get him back on track and to hold him accountable.
Q. Do you have any idea approximately when these conversations took place with Chief Powers and Chief Stewart?
A. I do not recall, but it was probably sometime early November, early December -- or late November, early December.
Q. Late November, early December of last year?
A. Yes, that's correct.
Q. Okay. "He is on thin ice and is being watched very closely." Were those your words, or were those words that you got from Chief Powers and Chief Stewart?
A. Those are my own words.
Q. Okay. "I told him that his previous verbal reprimands that are noted in Trakstar are his final warning." Again, your words?
A. Yes.

253

Q. "It was made very clear that the next time he doesn't follow the policies or my expectations, it would be a written reprimand." Did you issue a written reprimand, ever?
A. No, I did not.
Q. Why not?
A. I only had him for two, I believe two shifts after this conversation. So I didn't work with him very much after that.
Q. During those two shifts did you ever have any discussion with Gary about whether he was meeting the expectations that you needed?
A. In those two rounds? Is that what you're asking?
Q. Yeah, those two subsequent shifts that you had with him.
A. Not that I recall. I cannot remember.
Q. Do you receive training on policies and procedures of the department?
A. Yes. We have a program called Lexipol where we see those policies that come to us. We have to read them and acknowledge that we have read them.
Q. Have you ever received training with regard to the handling of personnel complaints?
A. Have I -- I'm sorry. Can you ask the

254

question again?
Q. Well, let me try it again. Have you received training with regard to corrective action for employees that you supervise?
A. Yeah. I can't remember specially, but I know of the policy and I've read it.
Q. Have you ever been told that the only time that you as a supervisor should initiate a complaint with regard to somebody who you are supervising who you have observed is not following the policies and procedures of the department, that the only time that you should initiate a complaint is if it comes from outside, and that you should not actually initiate a complaint if you personally observe some kind of --
I'm going to try that whole question over again.
A. That would be great. Thank you.
Q. Yeah. I got lost, and I was asking it.
A. I was trying to follow, but --
Q. No, I get you. Have you ever received any training that says the only time that you should initiate a complaint against someone that you are supervising is if you have not personally observed a violation of policy?
A. I'm not sure I understand the question.

255

I'm sorry.
Q. Have you ever been told, have you ever been given any kind of instruction, ever been trained that the only time that you should initiate a complaint with regard to the actions of somebody that you are supervising is if you are not the person who personally observed the violation of policies and procedures?
A. Can you rephrase that in simpler terms for me? I don't understand where you're going with it. I don't understand the question.
Q. You observe somebody who is violating a policy or procedure. Do you understand that you can file a complaint against them with the administration?
A. I can file a complaint, yes.
Q. Do you understand that you should do that?
A. Yes.
MR. EDWARDS: Okay. That's all I've got.
CROSS-EXAMINATION
BY MR. GODFREY:
Q. Captain Sayre, you made -- you had your meeting with Mr. Schvaneveldt on December 15th, correct?
A. Correct.

256

Q. Will you turn to Exhibit 1 in the binder there. And on page 14 of that exhibit there is a Trakstar note from Captain Maxwell. Do you recall if you had seen that note when you had your meeting with Gary?
A. Yes, I believe that was there.
MR. GODFREY: Okay. That's all I have.
MR. EDWARDS: Well, I do want to ask you about that, then.
REDIRECT EXAMINATION
BY MR. EDWARDS:
Q. Captain Maxwell, December 5th, 2020. Let's look on page 15. At the top of that page, this is what Captain Maxwell wrote. "Throughout the course of the day Gary did well at some of the things I had asked, but he was really frustrating in other areas. I felt as though I was trying to motivate my nine-year-old son, not a grown adult that already knows what should be done."
Have you ever made any kind of an observation in somebody's Trakstar and compared them to a nine-year-old child?
A. No.
Q. Would you consider that to be appropriate?
A. For me personally, I would not write that.

257

Q. At the end he also says, "Again, it was like trying to manage a nine-year-old boy and not a grown adult with 18 years in the fire service."
Have you ever had a discussion with Gary Schvaneveldt about the number of years that he has been working for the fire department?
A. Yes.
Q. When you talked to him on the 15th of December and you said, this is it, this is your final warning, you're on thin ice, was there any discussion about the fact that he wanted to stick with the fire department at least long enough for him to get his 20-year retirement?
A. I knew that he wanted to, yes.
MR. EDWARDS: That's all I've got.
HEARING OFFICER: Anything else? Thank you.
MR. EDWARDS: Thank you. I've got one more, then I'm done. Well, I've got two more.
HEARING OFFICER: Okay.
MR. EDWARDS: Captain Maxwell.

CHRISTOPHER MAXWELL,

called as a witness, having been first duly sworn, was examined and testified as follows:

///

258

DIRECT EXAMINATION

BY MR. EDWARDS:
Q. Captain Maxwell, could you give us your full name and spell your last name.
A. Christopher Maxwell. Last name spelled M-a-x-w-e-l-l.
Q. And you go by --
A. I go by Topher.
Q. Okay. And how long have you worked for the fire department?
A. Eighteen years.
Q. In those 18 years, have you had interactions with Gary Schvaneveldt?
A. Yes.
Q. Have you had interactions with him as his supervisor?
A. Yes.
Q. Have you ever been instructed that you are only to initiate a complaint against a person that you are supervising if you have not personally observed a violation of policy by that person?
A. I have not been instructed that.
Q. There is a note in the file that was used as a basis for some of the discipline with Gary dated the 15th of December of 2020. Do you recall making a

259

note -- I think it was a written reprimand. Yes. If you'll look on page 5 of Exhibit 1.
A. What was the question?
Q. Well, first of all, did you write that?
A. Yes.
Q. Is it true that you only worked one day with Gary Schvaneveldt?
A. No.
Q. In December?
A. I don't recall how many days I worked with Gary in December.
Q. Okay. This note under the introduction says, "We worked together December 4th, 2020. I was the officer and you were the engineer." Do you know whether you worked any other days in December with Gary Schvaneveldt?
A. I don't know.
Q. You indicated that Gary became increasingly difficult and frustrating to manage and lead because of a casual and flippant attitude toward policies and directives of Metro Fire. What are you referring to?
A. Could you restate the question? Where are you reading?
Q. Under introduction. I'm looking at your

260

particular --
A. Okay.
Q. "Throughout the day it became increasingly difficult and frustrating to manage and lead you because of your casual and flippant attitude towards the policies and directives of Metro Fire."
What policies and directives are you referring to?
A. So specifically in there it was failure to follow the uniform policy and failure to do a truck check, maintain equipment, and the uniform policy. So those are the ones that come to mind right off.
Q. You say in the synopsis here -- can you see that?
A. Yes. Thank you.
Q. And I've got to tell you, I know it's difficult to read. This is a copy of what I got, and it's in almost infinitesimally small type. "The written reprimand is specifically for failure to follow directive 06-2020, dated 11/09/2020."
What is that directive that you are referring to?
A. It's the directive to wear a face mask while in the station amongst other personnel.
Q. And then you say there were several other

261

instances that could have qualified for a written reprimand, but the one that you specifically did here was with regard to the face mask. Is that correct?

A. Correct.

Q. Okay. Tell me about the situation in which that occurred.

A. What led to the writeup?

Q. Yeah. What led to -- well, first of all, were you ever instructed to give a written reprimand almost ten days after this situation had occurred?

A. No.

Q. Why did you wait ten days?

A. So after the instance I consulted with his battalion chief, and then I consulted with Captain Sayre to try to figure out the best course of action to help correct his behavior. And through the course of that, it just took time to make sure that I was making what I believed to be the appropriate actions.

Q. Who was the battalion chief?

A. It was Chief Greg Stewart at the time.

Q. Now tell me about the incident that led to this, if you would, please.

A. So to kind of round out the day, typically I start the day with a meeting at 7:20 in the morning to make sure that everyone has an idea of what the

262

plans are for the day and what my expectations are of them. During that morning briefing I made it a point to stress the importance of wearing a mask according to the directive that was issued by the department. At that time Gary said that he could comply with that. I didn't hear any objections.

Later on in the day I went downstairs, and he was in the apparatus bay talking to some construction workers, contractors that were in the bay working on the station. At the time I asked him to put a face mask on, which he complied, went to the engine, found a face mask. Went to the engine, found a face mask, and put it on.

Later on in the day he was in the dining room area of the station, which is adjacent to the kitchen. At that point in time I was in another room, came out and observed Firefighter Knowles and at the time Engineer Schvaneveldt in that common area together. Firefighter Knowles had her mask on and Engineer Schvaneveldt did not. I asked him to put a face mask on, at which time he told me he couldn't and he wouldn't.

The conversation moved into another room adjacent to the kitchen area. And I said, "I need you to wear a face mask and follow the directive;

263

otherwise, I've got to make notes and start the corrective action behavior plan." And he said, "If you've got to make the note, then make the note."

Q. Did he explain to you why it is that he felt that he could not wear a face mask?

A. During the altercation he said that he felt like he couldn't -- he felt like he couldn't breathe with a face mask on.

Q. Were you aware of the fact that he had actually at one time made a request for a larger face mask so that he could breathe?

A. No, I was not aware of that.

Q. If you had known that, would that have made any difference with regard to whether you wrote him up?

A. Yeah. I think -- my belief is that if he had presented that as a problem earlier on, then we could have made the proper actions to get what he needed to conform with the policy.

Q. If he had told you -- well, did he ask you for a larger face mask then?

A. No. At no point did he ever ask me for any alternative.

Q. Why is it that you felt that it was necessary for you to issue a written reprimand in

264

this particular instance?

A. One of the biggest driving factors was the fact that I had to continually ask him over and over throughout the day to comply with the policy after, you know, laying out expectations early on in the morning and have him accept those.

Q. I want to look at Exhibit No. 1. Give you a had a chance to look at that, and I'll tell you what we're going to be looking at here. It's on page 14, having to do with December -- it says December 5th, 2020. My understanding is that the only issue that you had on which you based your written reprimand was the face mask. Is that correct?

A. There were other issues, but that's what I wrote him a written reprimand for specifically.

Q. What other issues were there? Was it the failure of a proper uniform?

A. Yes.

Q. And anything else?

A. Failure to do a truck check.

Q. Okay. Have you been listening to all of this all day?

A. Yes.

Q. Explain to me the difference between a day

265

one truck check and a day two truck check.
A. So a day one truck check is extremely thorough, somewhat of an inventory to make sure every single piece of equipment that should be on the truck is on the truck, as well as a mechanical check to make sure that both the engine, the brakes, the pump, all of the mechanics of the vehicle work appropriately.
Q. Okay. Thank you.
In your notes of December 5th, 2020, you note in your second paragraph, which is on page 15, "Throughout the course of the day Gary did well at some of the things I had asked, but he was really frustrating in other areas. I felt as though I was trying to motivate my nine-year-old son, not a grown adult that already knows what should be done."
Why did you say that? In fact, you said it twice. You said it at the end as well.
A. Because I have a nine-year-old son that was real life, real world experience that I had to draw from.
Q. You thought it was professionally courteous to compare Gary Schvaneveldt to your nine-year-old son?
A. His actions were that, yes.

266

Q. You do note this. "To Gary's credit, he did a great job at wearing turnouts on fire calls, as I had asked, and he was involved and engaged in a very mediocre Target Solutions training. He was also very involved in how to better our canyons access book. He had very good insights and could do a really good job with that."
Was that all true?
A. Yes.
Q. But then you say that you had to continually ask him and remind him of what needed to be done. You did mention something about this mediocre Target Solutions training. Is that the one he fell asleep in?
A. No.
Q. Okay. Because he was involved and engaged in that one, correct?
A. Yes.
Q. You do not note in either your Trakstar note on December 5th or in your written reprimand with regard to that issue the word "insubordination." Isn't that true?
A. No, it was not in the Trakstar note. I can't recall on the written reprimand. It could have been in there.

267

Q. "At the end of the exchange I told you that if you refused to comply, I would have to document it in Trakstar. Your comment was to do it, to which I rebutted that I didn't want to have to. It was a directly insubordinate move on your behalf."
How did you interpret it as insubordinate when he said to do it?
A. His voice was raised, and he was directly resisting an order to follow a directive of the department.
Q. And that order had to do with the face mask?
A. Correct.
Q. Anything else that you considered to be insubordinate?
A. I think generally failing to follow policy throughout the day is, although not direct but indirect insubordination.
Q. Did you ever say to him, cut it out; you're being insubordinate?
A. I didn't use those words, no.
Q. That day, on December 4th, did you ever see Chief Powers working on his car without a face mask?
A. No.

268

Q. I'd like you to look at Exhibit No. 23, please. Do you see that photograph?
A. I do.
Q. Do you know where that photograph was taken?
A. It looks like one of our fire stations.
Q. Do you recall if it was the fire station you were at?
A. I don't know.
Q. Can you tell if that is Chief Powers or not?
A. No.
Q. Let's look at the next page. Does that top photograph indicate which fire station you were at? Does that give you an indication?
A. Yeah. It looks like it's Station 81.
Q. Let's presume for a second that on December 4th Chief Powers was working on his own car in a bay without a face mask on. Would you consider that a violation of policy?
A. If he was alone, no.
Q. So you can get away without a face mask if you're alone, but not if you're with other people?
A. Correct. That's what I explained to Gary that morning, that I was fine with him being alone in

269

his room, then he didn't have to have a face mask on. But I explained that if he was in common areas around other people that I'd like him to have a face mask on.

Q. Were you aware that between 11:30 and 12:30 Servpro was cleaning all of the front line apparatus and that the crews were there at the station that day?

A. I don't recall that.

Q. I'd like you to look at -- I think it's the last photo in Exhibit No. 23. Well, actually, it looks like this. And I'm not sure that what you've got is what I've got. I want you to look at one that looks like this. There we go.

Do you know what that is?

A. A daily schedule is what it appears like.

Q. Can you see over there, Friday 12/4, "all stations apparatus cleaning, 11:30 to 12:30, Servpro --

A. Yes.

Q. " -- to clean all front line apparatus at Station 81"?

A. Yes.

Q. What does that mean to you?

A. It means that barring any calls, that we

270

would be at Station 81 to get Servpro to decontaminate our apparatus.

Q. You'd all be there together?

A. Correct.

Q. Under those circumstances, would it be appropriate for you to be working on your car at that same time without a face mask?

A. I can't speak to that.

MR. EDWARDS: Okay. That's all I've got.

MR. GODFREY: I don't think I have any questions. Just hang on one second.

CROSS-EXAMINATION

BY MR. GODFREY:

Q. Had you worked with Mr. Schvaneveldt prior to December 4th?

A. Yes.

Q. You supervised him prior to December 4th?

A. Yes.

Q. On those occasions was he compliant with department policy, generally?

A. Not always.

Q. Was -- when you say "not always," can you explain that?

A. Yeah. A lot of my expectations that I laid out in the morning that I worked with Gary were

271

due to previous experiences that I had had with him in failure to wear the appropriate PPE and uniform and comply in general with policy. And therefore, I explained at that 7:20 meeting what I expect my minimum expectations of my firefighters that I work with that day.

MR. GODFREY: I don't have anything further.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q. You were referring to a meeting of what date?

A. 7:20 in the morning every shift that I work.

Q. And are we talking about December 4th again?

A. Yes.

MR. EDWARDS: I have no other questions. I think the only other witness I'm going to have is my client. Do you mind if we take five minutes so I can step out and talk with him?

HEARING OFFICER: That's fine.

(Recess from 4:11 p.m. to 4:16 p.m.)

MR. EDWARDS: I call Gary Schvaneveldt.

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272

GARY SCHVANEVELDT,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. Gary, would you give us your full name, and please spell your last name.

A. Gary Schvaneveldt. S-c-h-v-a-n-e-v-e-l-d-t.

Q. How long were you with the fire department before you were terminated?

A. Twenty-three years.

Q. Of those years, how many were full time?

A. 19 -- or 18.9. I was 14 months away from retirement.

Q. I'd like you to look at Exhibit 1, the Notice of Pre-Disciplinary Hearing. It's dated January 5th, 2021, and it outlines what I will call seven allegations. Before receiving this, did you have any idea that the department wanted to discipline you for the matters that are laid out in this notice?

A. No.

Q. Was there ever any kind of an investigation that you were aware of?

273

A. No. I've never asked any questions or talked to about anything other than interviews with Captain Sayre or Topher.
Q. Was there ever any investigation by a supervisor who was not your supervisor with regard to any of the matters that were set forth in these allegations?
A. No.
Q. Were you ever told that you could record an interview with you with anybody with regard to any matter that was in these -- in this Notice of Pre-Disciplinary Hearing?
A. I was never told that, no.
Q. I want to go through these one by one so that you can tell your side of the story, explain what's going on.
Item No. 1: "Violation of Policy 1010.8, Reporting for Duty. Members should notify their Captain and Battalion Chief at his/her duty assignment location as soon as practical of any inability to report for duty at the time required."
And "Corrective Action Matrix 15, 'Improperly reporting of disability, sick leave or return to duty.'" Those are all in bold. And it states: "Inexcusable failure to follow proper

274

disability procedure, abuse of sick leave or failure to notify proper persons of sick leave."
And it references "Specifically, on December 15th, 2020 you stated to your captain and crew that you would call in sick if Captain Carlsen was the callback captain. On December 20th, 2020, you placed yourself on sick leave without properly notifying the battalion chief."
That refers, I believe, to Exhibit A to this document, which is a memorandum to the file, date of complaint, 12/15/2020. And up in the upper left-hand corner it says 12/28/2020. The investigator was Topher Maxwell.
A. It's December 4th.
Q. Oh. Sorry about that.
A. It would be Exhibit B.
Q. Exhibit C?
A. B.
Q. B. All right. Sorry about that.
A. It's one of them.
Q. Tell me what happened, what that's about.
A. My wife at the time was then 14 weeks pregnant with a really hard pregnancy. She's had morning sickness pretty much the whole time she's been pregnant. The two days prior to me calling in

275

sick she had slept for all of Friday, all of Saturday. I'm not sure on the dates. But when she woke up at five o'clock in the afternoon, she said she still felt awful after sleeping for the two days. I said, "Do you want me to call in sick?" And she said, yeah.
So I called in sick for the following two days because she needed my help to watch the two kids.
The following week after that, she was subsequently put on bedrest because she was then actively bleeding and had free blood in her uterus. So she was put on bedrest the following week after me calling in sick.
Q. Did you ever tell anybody that -- to your -- did you ever state to your captain and crew that you would call in sick if Captain Carlson was the callback captain?
A. I said I would call in sick if I was working with Carol Baskin.
Q. Why?
A. We always talk about who is working with -- who's replacing somebody. Instead of bitching about somebody specific, it was just anything when you bitch about is about Carol Baskin.

276

I said, "If Riley's gone and I'm working with Carol Baskin, I'm going to call in sick."
Q. And did you follow through and say -- and call in sick if you found out that Captain Carlson was the callback captain?
A. It had no -- that didn't pertain to why I called in sick.
Q. And then we've got: 'December 20th you placed yourself on sick leave without properly notifying the battalion chief." You heard what the battalion chief had to say about that. What's your response to that?
A. When my wife woke up and I found out that she was wanting me to stay home, the last time I called in sick with Chief Stewart, I called in to let him know. And he was like, yeah, just go ahead and put yourself on sick leave on the calendar; and I'm like, okay. And it was a ten-second phone call, maybe, that I called him.
So I thought that's just how I'd do it, so I just put myself on sick. And I helped my wife with the kids and getting her dinner and trying to help her with waking up and still feeling awful.
Q. Between the time that you called in sick and January 5th, 2021, did anybody attempt to sit

277

down with you and talk to you about that?
A. No.
Q. Let's look at Corrective Action Matrix 1.B, Insubordination Major. "Refusal to obey legitimate orders, disrespect, insolence or like behavior in a non-emergency situation. Resulted in a written reprimand."
I think we heard that was from Captain Maxwell, correct?
A. Uh-huh.
Q. And there are three things here: out of proper uniform and failed to comply; told him to wear a face mask and failed to comply; told to do an engine check and failed to comply in a timely manner.
What happened there?
A. All I can remember with working that shift with Topher is he asked me if I had my pullover, which was a three-quarter zip jersey we wear, either that or a bat shirt whenever we leave the station. I told him it was on the steering wheel of the engine, and if we get a call I've got to move it to put it on, and that's where I keep it. We don't have to wear it around the station. The stations were closed due to COVID. So I didn't have my pullover on while we were at the station, but if we get a call it's on

278

the steering wheel. That's the only time I remember talking to him at all about being out of uniform was him asking where my pullover was.
Q. Are you aware of anyone ever being disciplined because they didn't have their pullover on in the station during the time of COVID when it could be put on when you go to a fire?
A. No.
Q. Are you aware of anybody ever being disciplined for improper uniform for not having a pullover in the station?
A. In the station we're not required to wear them. It's not policy, unless we have a tour or a class or something.
Q. How about a face mask issue? Did you have a face mask issue?
A. I did tell him -- because I typically am -- have no problem being in a room by myself, of course, sequestering myself away from other people. And then the time while I was finishing up eating, and I guess Meg was in the kitchen with me, Topher came in. I was finishing eating, and I hadn't been in a room with Meg or Topher for most of the day. I spent most of the time in my bedroom anyway.
Q. Do you have a problem with face masks?

279

And when I say "problem," I'm not talking about a political issue, I'm talking about whether wearing a face mask gives you any kind of anxiety or problem.
A. I found I can't regulate -- well, I've found I regulate my anxiety with my breathing. I can't deep breathe with my face mask on because you're deep breathing all the time, so it's all the same. And it puts me into an anxiety or panic attack that I've never experienced before.
Q. Have you made the administration aware of that fact?
A. I've asked for a different size mask --
Q. Let's look at Exhibit 24.
A. -- bigger size.
Q. Is this a text conversation that you had with regard to face masks?
A. Yes.
Q. Who was it sent to and who was it received back from?
A. It's to Chief Greg Stewart. And it said, do these come in a bigger cup, because it doesn't fit my face.
Q. And his response was?
A. It's "one size fits most." I'm not one size fits most of anything.

280

Q. Did you explain to anyone in the administration the anxiety issues that you have when you wear a face mask?
A. No.
Q. Engine checks. "December 4th, you were asked to do an engine check by your captain and failed to comply in a timely manner." Explain that.
A. For most of November and December we were in a reserve engine.
Q. What does that mean?
A. An engine that wasn't our typical front line engine. We were in a reserve. And to do truck checks, to go in the computer, that reserve engine, most of the time that I had it up there for November and December, the days were off. It was -- you go --
Q. What do you mean by "the days were off"?
A. I go in on my first day to do an engine check, and on the computer it was a day two check that just asked me to check off 14 things -- fuel level, battery condition, simple things like that. That was always on -- my day one was a day two check. A day one check I think is 187 items. A day check [sic] is 14.
So I reported to Kettle, Maxwell, and Shafto, can we get this fixed in the computer so that

281

it's correct and I'm doing a day one check on my day one and not just pencil-whipping a day two check on my day one -- on day one check.
Q. And what was the response to that?
A. It never got corrected. It never got fixed. It was always -- it was off for most of that month. And that's why the delay in putting it in the computer is I didn't want to be accused of pencil-whipping a truck check and putting in the incorrect day on the thing. I was trying to get it corrected on the computer. So someone had either missed it or it was off in the computer reporting system on a day one check versus a day two check.
Q. So did you refuse to do a day two check?
A. The engine check was done. My equipment, my uniform was on the engine. It just wasn't put in the computer because the days were wrong.
Q. Did you inform your superior officers with regard to that?
A. Yes, I did.
Q. And the response was what?
A. They were going to try and get it fixed. They were sending texts to I don't know who to get it fixed, to see if the computer system could get fixed; and it didn't get fixed.

282

Q. Let's go to the next page, page 3. Corrective Action Matrix 16.A, "Improper performance of assigned duties, minor." Now, we have got here 11 instances. I suppose we ought to go through them all. I apologize for that.
The first one here, "Specifically, on December 4th, 2020, you failed to perform your engine checks in a timely manner and had to be badgered to complete." That appears to me to be the same thing that we've got under insubordination major, having to do with you were asked to do an engine check by your captain and failed to comply in a timely manner. Those are the only references to engine checks with regards to December 4th. It's considered to be minor.
Is there anything else you would like with regard to what it is you've already said in that regard?
A. No.
Q. And we've got -- November 4th, we've got day 2 checks, Captain Kettle?
A. That was late.
Q. Same reason?
A. No. That was just me being late on doing it.

283

Q. So --
A. I think we had had calls late in the night, and that was when Shafto wrote me up for sleeping in like 7:30 when Kettle came in. Because we had had calls the night before.
Q. October 14th [sic], didn't log day two checks in a timely manner with repeated reminders from your captain, culminating in a call from the battalion chief.
A. That was a call from the battalion chief because it hadn't been logged in the computer. The truck had been checked. My equipment was on there; my gear was on there.
Q. How serious was it?
A. It got me here. That's how serious the truck checks are not being done in computer, but not well enough to it get corrected in the system.
Q. October 12th, 2020, "You did not complete your day two checks."
A. Specifically, I don't know anything about that on what was done or what wasn't done on that day --
Q. If you look on the 2nd here.
A. -- if it was a day one or a day two.
Q. October 18th. This is from Shafto. This

284

is page 16 of Exhibit 1. "Gary did not put in the day two check until after 1840 when we got we got a call from BC Stewart asking why they had not yet been done. I had asked him no less than three times during the day if they were done yet."
Is that true?
A. I guess it is true, yes.
Q. Let me ask you about your relationship with Paramedic Shafto. He wrote an awful lot --
A. Uh-huh.
Q. -- of issues here. What's your relationship with him?
A. I would say working relationship, fairly good. I -- I look up to him as fairly intellectual and smart. He questions a lot of things too that I've looked at and questioned, too, and just department policies. I've learned a lot of things. He's got a lot of good points and stuff that he brings up that are kind of outside of the Metro box of thinking.
Q. In the final note that he made to your file, December 31st, he spent three and a half pages saying that you were deceitful, insubordinate, management nightmare, that you had not had adequate management. But he also talked about a situation in

which you were discussing the governor's mask mandate which he says you were very much against. You asked the hypothetical about you being in Smith's shopping and you were seen without a mask on and carrying a gun; and his response was, why would you even think that was appropriate?

Do you remember that discussion?

A. I do.

Q. Were you talking about anything having to do with policy of the department?

A. No. And he's taking two topics and combining them into one. We were talking about someone at Smith's shopping without a mask and is there, just there to intimidate somebody. I said, Okay. Well, what if somebody was there at Smith's open carrying a gun? The mask thing aside, just open carrying a gun. Are they intimidating somebody too?

And he says, yeah, they would be intimidating people there. Why would you want to go to Smith's and just intimidate people?

And I don't see the correlation between intimidating and either not wearing mask or carrying the gun. But that was his -- that was the conversation that we had.

Q. Did he ever say, "I'm going to report you

for this conversation"?

A. No.

Q. Was that the kind of conversation that firefighters have in the department?

A. All the time.

Q. "On September 28th you had to be reminded by your captain several times to complete your afternoon check. It was not logged until 1700."

Do you know anything about that?

A. I'd have to see if it was a day one or a day two check. But that would have been about the time we got the replacement engine.

Q. "September 5th, you were requested by your captain to contact Chief Stewart about your medical testing. On September 10th, 2020, when your captain checked your status, the contact had not been made.

And we also have: "On September 5th it was noted that you were late on your training for the month of August being completed."

Tell me about that.

A. On September 5th I had scheduled vacation on the day we were scheduled to go and get our blood drawn at the hospital. With COVID, we ended up canceling our trip, so I stayed here.

On that day I sent a text to Chief Stewart

asking him, hey, I'm going to miss medical day; what do you want me to do? And he says, well, go on another shift's day. And on the schedule, I've gotten pictures of you and the schedule. The other two shifts had gone a week and a half prior to us. We were on weekends. So we had been on either Saturday-Sunday or Sunday-Monday and hadn't been able to do it.

So the other two shifts had already done their medical testing before A Shift was scheduled to. So his writing me up, he had no clue about what had happened or what I had done.

Q. Did he ever ask you about it?

A. No, he didn't ask me. Nobody asked me anything. It was just a write-up, when I had asked. And nothing was done with the other people that had scheduled vacation on the other three shifts that they were scheduled to do their blood work.

Q. So there were others that were in the same situation as you were that were treated differently?

A. I think every day -- most days there's three people off on a day. So three shifts, three people off. There's nine other people who would have been in the same boat of getting their medical testing done on a different day than they were on if

they were on vacation that day. So I doubt any of them were written --

Q. Somebody had told you that that was a violation of policy?

A. That's not a violation of policy.

Q. Did anybody say that there needed to be some sort of corrective action taken with regard to that?

A. No. Taking a vacation?

Q. Well, did you ultimately have that testing done?

A. Yeah.

Q. It was just done on a different day?

A. We just stopped in at the hospital and got it done like we've done years before like anybody else that was required to do testing.

Q. How about the late on training for the month of August being completed?

A. I wouldn't know specifics. I might have been. I try and keep up, but it was maybe one or two items that I needed, or just needed to be logged in.

Q. Well, if we look at page 17 of the pre-discipline notice, the only notes we have for September 5th says Stewart -- August 11th training: Bloodborne Pathogens Safety Target Solutions Course,

289

Pre-Incident Planning Target Solutions Course, Fire Detection, alarm and suppression systems.

A. Some of those trainings you can do by yourself. Others you do as a crew; others you do as a shift. And I'm not sure specifically if they were done the whole shift at all five stations or just a crew or just individual by myself.

Q. Well, the reason I bring that up is I don't see anything about being requested to -- with regard to medical training -- or the medical testing. August 30th, didn't complete day two checks.

A. I don't know how to speak on that.

Q. This is from Shafto again. "My first shift with Gary as the acting officer, I asked Gary several times, more than five, to log the daily truck checks in PSTrax. My last request was via text at 2149. He did finally log the day one check around 2230 that evening and never logged a day two check."

Explain that to me.

A. I don't know if we were in the replacement engine by then with the problems with the day checks.

Q. We also have there another note that says August 30th, our day two. We had a busy night and didn't make it to bed until around 2:30 due to back-to-back calls. Gary did not come out of his

290

dorm room until 9:50.

A. He didn't see me out of my bedroom till 9:50. That doesn't mean I wasn't up.

Q. Were you up?

A. It was COVID. We were all sequestered in our bedrooms. I spent 80, 90 percent of my time in my bedroom. Just the fact that he didn't see me that day doesn't mean I wasn't up. Usually when I get up --

Q. Did he ever talk to you about that?

A. No. Usually when I get up I'll leave my door open so people know that I'm awake, or that I had been up and my door was open.

Q. If you were quarantined or sequestered as a result of COVID but you are still in your room, is that considered to be sleeping on the job?

A. No.

Q. What is it you do while you're in there?

A. I did a lot of computer work on my computer. I did department history, I did department pictures. I did a lot of personal projects department-wise.

Q. On July 19th, 2020, you were late in logging in vehicle checks. July 18th, 2020, late. That was from Stewart.

291

A. I don't know how to respond to those.

Q. How serious is it to be late in logging a vehicle check? Are you aware of other firefighters who have been late logging vehicle checks?

A. And written up, no.

Q. Are you aware of any that have been late that were not written up?

A. Yes.

Q. Okay, No. 4: Violation of Policy 1010.6, Reporting for Duty. Donning the appropriate uniform prior to the start of work assignments and be properly attired at all times when representing the Department.

And Corrective Action Matrix 22, "Out of uniform or no uniform." We talked about this with regard to December 4th and the fact that you actually had your pullover there available?

A. On the steering wheel.

Q. November 28th, you were out of uniform wearing shorts at 1220 when told by your captain to don a proper uniform at 0800 and again at 11:30.

Tell me about that.

A. Just spending time in my bedroom. I don't know if it was a day one or a day two, but that's typical that I'll sleep in in shorts or I'll work out

292

in my room.

Q. I'm sorry -- go ahead.

A. Whether I was working out in my room or not.

Q. Do others wear shorts?

A. Yes. We have department-issued shorts when we work out or tour around the station.

Q. "On October 11th you were out of proper uniform on medical and had to be reminded by your captain to comply with the uniform policy."

Do you recall that situation?

A. Specifically, I do not. Just one medical out of -- a date I don't --

Q. "September 22nd you were out of proper uniform on two separate occasions where your captain had to remind you to don a proper uniform."

Can you speak to that?

A. No, I cannot. I don't know specifically.

Q. No. 5, "Violation of Policy 914 Personal Protective Equipment and Federal Code. Members shall be expected to wear the PPE anytime there is a risk of exposure to a hazard."

Now, there's no reference here to the corrective matrix, Corrective Action Matrix; but "On October 29th you arrived at a gas leak without proper

293

protective equipment, turnouts. When asked by your captain to put on your turnouts, you came back with only half of your ensemble, stating it was too hot."

Do you recall that situation?

A. Yeah.

Q. What happened?

A. This was when we were in the reserve engine. This reserve engine that I was in, I have had multiple experiences with my size 14 boots. The way the gas pedal and brake pedal are situated, the harder you push the brake with my boots, I was actually also pushing the gas. So when I drive that engine I didn't like to wear my turnouts.

When we got to a gas leak down on Fifth West from our station up on the boulevard, I went in and put my boots on. Talking to the crew when we first arrived, they're like, there is no gas lines here, we know because we've already had them removed, but we got a whiff of gas and we don't know where it was coming from.

So there were no gas lines in the construction zone that we were working in, and I knew that before. The gas lines were gone, and they had excavated the dirt out of the Woods property down on Fifth West where the Woods Cemetery is. So I did

294

come back with my turnout boots. And when asked again, I went and got my coat and my helmet and put it on.

Q. Did somebody confront you about it that day?

A. Shafto.

Q. What did he say?

A. Just, "Go get all your turnout gear on." And then I'm like, "Okay. Why? There's no gas lines here. It's just a smell." And we found nothing. We picked up nothing on our monitors.

Q. No. 6, "Violation of department directive 07-2020, Covid-19 and State Public Health Order 2020-25-(5)a.i, statewide restriction."

Let's go down to the note here, "Specifically, on December 4th, your continued failure to properly take the necessary precautions of wearing the mandated face mask throughout the shift, exposing your crew and construction visitors to the SARS Covid-19 virus."

We've talked about this before, correct?

A. Uh-huh.

Q. Is there anything you'd like to add with regard to that?

A. Just that I was no different than anyone

295

else at the station. That's why I've taken pictures of other people not wearing masks at the station.

Q. Let's talk about that for a second. Let's look at Exhibit No. 23. There's a photograph here that shows three people, one of whom has a mask on his chin, and the other two of them do not have masks at all. Tell me about that situation.

A. We came down to Station 81 to take out a brand-new engine to go train on it before it got put into service. We went upstairs into the kitchen area where three members of the on-duty crew were sitting around the kitchen table, none of them wearing masks. None of them had masks. I had to talked to one about some Association business.

The rest of my crew came upstairs, and they proceeded to take their masks down on their chin and talk with the crew. And that's when I snapped this picture, because just something in my head told me, snap a picture of this. That was pretty common.

Q. Why did you take a picture of Chief Powers on the 4th of December?

A. Because if anyone else would have done -- been doing what he was doing, he would have -- they would have -- he would have been the first one to fire them or to have a big complaint about it.

296

Q. Under your understanding of the policies and procedures of this department, was he in violation of policies and procedures?

A. He's not wearing a mask. With all five stations there getting cleaned from Servpro, every engine, every ambulance was in the bay at the time when he was putting in his brake calipers.

Q. Working on his personal car inside the station?

A. Yeah. Working on your personal car and pulling out department equipment in inclement weather. I'm assuming that's why he was in the bay is because it was December 4th in inclement weather and cold. Or off-duty personnel not being at the stations is also another policy due to COVID is you're not allowed to be at the station off duty.

Q. Did you ever talk to Chief Powers about this?

A. No.

Q. Why not?

A. It wouldn't have gone anywhere.

Q. Let's look at Corrective Action Matrix 11, "Unauthorized Activity Inefficiency." And these all have to do with either sleeping during training, and then there are two having not getting out of bed. I

297

think we've talked about the one, staying in bed until 9:50; the other one, not getting up until 7:30 on September 29th.

Is that the case?

A. On October 23rd, yeah. We actually did have training that day, and I believe I did fall asleep. The very next shift we had training again, and Shafto fell asleep, and I even nudged Firefighter Knowles who was there, and we kind of got a good laugh with him snoring during training.

And then Shafto had a good idea. It's like, oh, instead of sitting in the La-Z-Boy chairs, because I had fallen asleep, he had fallen asleep, we brought in kitchen chairs from the kitchen and sat on wooden chairs during our training when we had Zoom training or television training in the dayroom.

Q. Was Paramedic Shafto asleep in a La-Z-Boy chair?

A. Yes.

Q. Okay. September 29th, 2020, not getting out of bed until 7:30. Is that the case?

A. We had had calls the night before. I didn't go back to sleep till -- I think it was five or six o'clock when I finally fell back asleep.

Q. Do others have this issue when they don't

298

get out of bed when there's been a late call?

A. I think routinely people do. And it's excused by the captains because it's -- it's your health. It's our health. You can go up and guys have their doors closed and they're in sleeping during the station. If there's nothing else going on, go get caught up on your sleep if you were up that night.

Q. In Paramedic Shafto's note of December 31st, he said that you've made it clear that you had given up years ago, that you were only in the department so that you could go ahead and get a paycheck?

A. I've never said anything of the sort.

Q. Have you given up on the department?

A. No. I had a bunch of other projects that I was working on that I wanted to complete in the next 14 months before I retire.

Q. What are those projects?

A. Oh, probably five years ago when I was with Lane I had printed off hundreds of newspaper articles from the department's history that I was working with with the Bountiful Museum to organize. And there was a lady that was helping me organize and categorize all the newspaper articles from the late

299

1800s to the department.

I was going through the pictures, some of the pictures back there and posting them online with the person's name identified into genealogy sites, so if a family member went to look for their ancestor that had worked with the department that I had identified in the picture, they would find the picture of their ancestor on a fire truck or in the department that I identified where they can get a picture of them actually as a fireman. That was a project that I had started and was working on.

Scanning a bunch of the pictures in the department into a computer and then putting them in a three-ring binder to protect them instead of the cardboard boxes that they'd been stored in for years was another project I wanted to do before I left.

Those are all just my personal thing, nothing I had been assigned or asked to do. That's just my personal goals for things that I had been working on for years. I identified the first ten years of volunteers and found where their graves were buried, and I was trying to work on getting a flag to put out for Memorial Day with the honor guard to note them as a volunteer fireman for Bountiful Fire, and found where their graves were, either in the

300

Bountiful Cemetery or the Centerville Cemetery.

Q. So you had plans before you --

A. Plenty of plans.

Q. -- would retire with 20 years?

A. Yeah.

Q. In the letter of termination, notice of termination dated January 26, 2021, Exhibit 6, Chief Stone, who signed it, although I think it may well have been drafted by someone else, said, "After reviewing the notice and considering the information you and your attorney presented at the hearing, we were left with four conclusions. Number one, neither you or your attorney disputed your behavior."

Is that the case?

A. I laid out the same facts, that my wife was having a difficult pregnancy and that's why I called in sick. And it's not about that I called in sick, it's how I called in sick has been their argument. I laid out facts that the system was working -- I never said the system wasn't working, I said the system, the days were wrong on the engine checks and I was trying to get that corrected so I just didn't get accused of pencil-whipping my truck checks. That's not me not showing interest or explaining my behavior. That's stuff that's easy to

301

check.
Q. No. 2. "Your negative behavior persisted over years of service and under multiple supervisors." I'd like to look at the last page of Exhibit No. 1, "Previous Corrective Action." As far as all of these were concerned, were these resolved with you and the department?
A. I think they were resolved and corrected, yes.
Q. Verbal warning, January 23rd, 2006, 15 years ago, sleeping and failure to check equipment. Written warning, sleeping on March 16, 2006. April 5th, 2006, sleeping. June 5th, 2006, pre-disciplinary hearing, demotion from engineer to firefighter.
You've kind of paid the price for this already, haven't you? I mean, you've gotten disciplined for these particular issues, correct?
A. Numerous times.
Q. Were you ever given any kind of indication that you were to address these particular issues in the pre-disciplinary hearing?
A. No. Wasn't asked about them. They asked about the other -- any of the other things they asked about, but not these.

302

Q. Okay. The third thing that was a result that Chief Stone indicated was, "Your behavior and attitude belie a general disregard for personal or public safety." When I asked him about that, he talked about the checks and also the mask.
Do you have a general disregard for personal or public safety?
A. No.
Q. I want to ask you about a specific instance. I live in Bountiful across the street from chief park (phonetic). There was a huge fire, came down the hill. Had people from all over the place. Had firefighters in the driveway telling me that my house was probably not going to survive. Were you in on that?
A. We were the first ones there on that.
Q. What did you do with regard to public safety in that instance?
A. I was in my fire engine by myself. My captain and firefighter were in a brush truck. We went over to the gun range, entrance into the gun range with Battalion Chief Stewart, decided our best mode of attack was to back out of the gun range and start protecting houses.
I went out and laid a supply line off of

303

the hydrant on the entrance to the gun range and resupplied my brush truck, and I stayed there at that hydrant from the initial, that call about midnight until I was pulled off at about eleven o'clock to go rehab. And I was in the engine there by myself from about one o'clock was the last time I saw my brush truck until 7:00 in the morning when two other engines were set up -- sent up to protect those five houses with me. And that was at the start of the fire at the entrance to the gun range.
Q. The last thing that Chief Stone indicates here is that you offered justifications for your behavior. You stated then in the pre-disciplinary hearing what you've stated here, correct?
A. Yes.
Q. "But did not express a willingness to change." Let's presume that you came back to work for the department. Would there be any change in your behavior?
A. I think I would be more paranoid of what they're looking at next. I was already taking pictures of my co-workers and making notes beforehand, because Riley said that I'm on thin ice and this is my final warning. I took that as they're coming, they're out to get me. And this is -- my

304

feelings appear to be correct.
Q. Were you under the opinion that you were being targeted for termination?
A. I was being targeted for -- I don't know what extent they wanted to go. Termination surprises me because of the -- the type of things that they wrote me up for. I think they've had to stretch me calling in sick into a major thing when my wife was put on bedrest. She's had a difficult pregnancy. That's easy to talk about. That's easy to prove.
Whether the day two checks, or whether the computer system was wrong and it was off a day and people had sent checks -- or text messages to Chief Stewart as to if, hey, the computer's off, can you fix it? That's easy to check. They're stretching things, making them into bigger issues that are life, safety, you know, "fire him" events that are not.
Q. You were told by Chief Stone, "Many of our officers, acting officers and employees refuse to work with you because they do not want to deal with your obstinance and lack of concern for safety."
Have you ever received any kind of indication from anybody that they or anybody that they know refuses to work with you?
A. No.

305

Q. "You are setting a bad example to new firefighters who were taught in the fire academy to respect officers, follow orders, and not to argue policies, principles, or orders during their duty."
Have you ever heard anybody come to you and say, you're a bad example to these new firefighters, your attitude is bad; you need to change that because you are negatively affecting these new firefighters?
A. Specifically?
Q. Ever.
A. In that sense, no. I've never been told that I'm a bad example to new firefighters.
Q. "Your battalion chief cannot trust you as an acting captain." Have you ever been an acting captain?
A. Not for years.
Q. "Which is required in your job description, and which makes it difficult for your battalion chief to replace the captain position when your captain is off."
Have you ever been asked to replace the captain position?
A. I've requested not to act in as acting captain.

306

Q. Why?
A. Because there's been training given to a lot of the captains that isn't open to everybody or that I haven't gotten, specifically Blue Card and how you talk on the radio. I'm comfortable in being an engineer, and I know that job and I know I can do that job. If you read my evaluations from either Lane, Rich, or Riley that I was with for the last seven or eight years, they state in my evaluations that they can trust me on what I'm doing and don't have to worry about me knowing how to pump, how to get where I'm going, or how to fulfill any of my responsibilities as an engineer.
Q. When I asked who the battalion chief was, I was informed that it was Chief Stewart. Has he ever told you, "I can't trust you as an acting captain"?
A. No.
Q. Is there anything else you'd like to add?
A. No.
MR. EDWARDS: That's all the questions I have.

CROSS-EXAMINATION

BY MR. GODFREY:
Q. When you had discussions with your captains at the station about your uniform, did any of them give you specific exceptions to the uniform policy of the department?
A. Specifically what?
Q. Did they allow you to be in something less than a full uniform?
A. According to policy, no. If we're at the station, we don't need to be in full uniform unless we have guests or training.
Q. So if a policy says, "Unless otherwise directed by their station captains, all employees should be in an approved uniform by the beginning of the shift," that would be news to you?
A. No. Whether that's department shorts or department shirt or department pants, no.
Q. So your position is that those issued shorts that are for workout are department uniform, and if you're in those you're fine?
A. No. If you're using them to work out, then you're doing what the department expects you to do in them.
Q. So what is "approved uniform by beginning of the shift"?
A. In your equipment ready to go to take a call. That's no different than if you're working out

307

or if you are any other.
Q. Okay. You asserted that you -- on the incident with the sick leave on the 20th of December, that you called in sick for the following two days.
A. Uh-huh.
Q. I wrote down those words. Did I get that right?
A. I called in sick the way Chief Stewart had told me to the last time I called in sick with him.
Q. You didn't contact your battalion chief?
A. I hadn't yet, no.
Q. You hadn't yet?
A. No. I put it in the computer the way Chief Stewart told me to and got busy with my wife and kids.
Q. And your sick leave was approved by Captain Moss?
A. After text messages with Chief Moss, yes.
Q. Yeah, who should have been the one that was contacted about your sick leave?
A. I didn't know who was the on-duty chief that day. I just put it on the computer.
Q. And you believed or decided that that was compliant with policy based on a prior call to who was your battalion chief at that point in time?

308

309

A. He still was my battalion chief, yes. That's who I was told to do it the previous time, yes.
Q. So you said a minute ago that if in fact you came back to work here, you thought you'd be more paranoid. And as an example of that, you said that, based on what Riley told you, you had started basically taking pictures and taking notes?
A. Yeah. That's what I've done before.
Q. Yeah. So --
A. Because I felt I was being singled out. I was being targeted when other people weren't wearing masks. Other people were doing the things that I was being written up exactly for doing.
Q. So explain to me, when did you start to be concerned about your position in the department?
A. I -- my position in the department, I wasn't concerned about my position in the department. Even when I went to my attorney and showed him my pre-disciplinary thing, they're like, they don't have enough to terminate you. They don't have enough to even demote you, according to their policies. I wasn't concerned about my position in the department.
Q. But you were taking pictures and notifying -- you know, sort of recording behavior on

310

December 4th.
A. For write-ups, because I was getting written up for this exact same thing. Things I was getting written up for, behaviors that -- I just know that there's -- and I talked to Riley about this. As he's writing me up, he's like, We're just trying to establish patterns. I says, Riley, this is the first time I've ever mis-called in sick for work and didn't do it appropriate to policy.
"I know. But this is the first time. We're just trying to establish patterns."
Q. Let me ask you a question.
A. And I says, "If it's a pattern, it's more than one."
Q. So the sick call-in was on --
A. It is not a pattern.
Q. The sick call-in was on December 20th, and your conversation with Riley was on December 15th. So explain to me how the sick call-in was prior to your discussion with Riley when he was setting out a standard for you to follow.
A. When we talked to Riley -- and I've got it recorded on my phone, so we can listen it to it. I talked to Riley when he was writing me up and saying, "You called in sick, and so I'm writing it and making

311

a note in Trakstar. We're trying to establish patterns."
Q. So that conversation was --
A. Except there isn't a pattern. I don't know of a date. I've got it recorded on my phone.
Q. But you're thinking it couldn't have been the December 15th date; it obviously had to be later?
A. It might have been later on one of -- with Riley. But I've got it written on my phone. Riley's like, "We're just trying to establish patterns." I said, "Riley, this has never happened before. This is a pattern of one. This is a Gary rule that no one else gets but I get.
Q. The sick leave rule?
A. That sick leave, getting written up for a pattern of one. Yes, that is a Gary rule.
Q. So you believe you are a target?
A. I believe we've shown that with evidence and pictures that I'm a target. Other people aren't getting written up for that.
Q. How long have you been a target of this department?
A. I don't know.
Q. Were you a target of the Bountiful department?

312

A. No.
Q. So we've got a history of disciplinary action of Trakstar notes that starts in 2006. It stops pretty significantly about 2011, and then it kind of picks up again about 2016. And you've heard people say there is not another disciplinary history in the department that's like that?
A. I've heard one person say that.
Q. Right. So do you dispute that?
A. I don't know. I don't look at other people's disciplinary actions.
Q. Okay.
A. And I've seen what other people have done and gotten away with that is like, I couldn't get away with that. I couldn't have gotten away with that discipline and not been fired that other people have gotten away with.
Q. And why is that? Why do you think that is?
A. I don't know.
Q. That, in your mind, it has absolutely nothing to do with your disciplinary history in this department?
A. I know that I have special rules and special considerations that apply to me that doesn't

313

apply to other people.
Q. So doing your engine checks timely is a special rule that applies to you and not to somebody else?
A. No, that's not one of them. I didn't say that was one of them.
Q. The sick leave one is the one?
A. No, I didn't say that was.
Q. Actually, I think you did say that.
A. I said that's a pattern of one, and I got written up for a pattern of one.
Q. Okay. So tell me what the rules are --
A. Has anyone been written up for a pattern of one?
HEARING OFFICER: Wait, wait, wait. Don't talk over each other. And it's mostly the witness, but let's nobody talk over each other. Thank you.
Q. (By Mr. Godfrey) What are the rules that are particular to you that don't apply to anybody else?
A. I don't know.
Q. So you indicated that -- well, you know that your pre-disciplinary hearing was recorded, right?
A. Yes.

314

Q. And you know that your attorney requested that that be recorded, right?
A. Yes.
Q. Was there any other meeting you ever had with command staff that dealt with any of these -- I would call them violations that started in August of 2020 and went to December of 2020? Did you ever have a meeting with anybody else to discuss any of those?
A. Not that I can think of.
Q. When you had the reserve engine, who did you talk to about the fact that it was a problem?
A. My acting captain at that station.
Q. Who was that?
A. It was either -- that would have been Topher, Shafto, Sayre, Kettle.
Q. So there were several?
A. People acting in -- several.
Q. Okay. Can you tell us when that period of time was?
A. I'm not sure when we got the reserve engine, no. It would have been sometime August, October through November, December. We had it in December when -- my last work, because the new engine had come in, put into service.
Q. Okay. And you don't know how long the

315

reserve engine was there?
A. Months.
MR. GODFREY: Okay. I don't have anything else for Mr. Schvaneveldt.
HEARING OFFICER: Thank you.
MR. EDWARDS: I have nothing else.
HEARING OFFICER: Okay, thank you.
MR. EDWARDS: I rest, sort of. I've got no other witnesses.
HEARING OFFICER: Mr. Godfrey?
MR. GODFREY: We don't have any witnesses to call, your Honor. What I would note is I would move for the admission from Mr. Schvaneveldt's counsel's binder Exhibits 1, 2, 3, 4 -- excuse me. Not 4. Yeah, 1, 2, 3, and 4, 6, 20, 21, 22, 23, and 25.
HEARING OFFICER: Let me run through those really quick, make sure I have those correct. 1, 2, 3, 4, 6, 20, 21, 22, 23, and 25.
MR. EDWARDS: You have omitted 24?
MR. GODFREY: I have.
MR. EDWARDS: Well, I obviously have no objection to those being admitted. I would move for the admission of all of the exhibits. I know that we did not cover many of the issues having to do with

316

the prescheduling of this matter, but one of our claims in this case is that there was a denial of due process not only with regard to the prehearing -- or pre-disciplinary hearing but also as to the matters that occurred afterwards, that there was some question of the propriety regarding the manner by which that was handled. And I want to have that record, if necessary, on appeal in order to prove that case.
HEARING OFFICER: Well, here -- I'll give you a chance to talk if you'd like.
MR. GODFREY: They're not in evidence. I could speak to 24 separately. My objection there is relevance. And it's just a base relevance objection; it doesn't have anything to do with Mr. Schvaneveldt's conduct, which is what part of the hearing is. The rest of the exhibits aren't in evidence. They weren't discussed. They weren't a part of --
HEARING OFFICER: Yeah, none of these were used. None of that information is relevant to my determination in this case.
MR. EDWARDS: All right.
HEARING OFFICER: I think you did include them in your pretrial brief, to a large extent.

317

MR. EDWARDS: I think that's probably true.
HEARING OFFICER: I have quite a lot of them. So I think they probably are in the record to some extent.
So do we want to talk about 24?
MR. EDWARDS: Yes. I believe that it does have relevance to the fact that one of the issues having to do with my client is that he did not properly use his face mask. There are indications here that he has asked for accommodation for a bigger mask, that that accommodation was denied. I believe that it has relevance as to whether it was proper to discipline him for improper use of a face mask when he had already indicated that the face mask that was provided was inadequate and that there was nothing done about that.
He's indicated already as part of his testimony that he has, if not a full-fledged medical condition, certainly an aversion to the claustrophobia about and an anxiety inducement as a result of using that face mask that are provided by the department.
HEARING OFFICER: None of which is mentioned in here, right?

318

MR. EDWARDS: Yes.
MR. GODFREY: Can I respond to that quickly?
HEARING OFFICER: Sure.
MR. GODFREY: They take as evidence the part of Exhibit No. 24 which is a text message that may or may not be about masks, truly. But there is never any indication that he was denied a different mask. There's no testimony or reference of any kind to support that. And the characterization of his condition as claustrophobic or anything else isn't supported by any evidence, either. There was testimony it made him anxious and uncomfortable.
MR. EDWARDS: The fact that he doesn't like the evidence doesn't mean that there is no evidence. I mean, the fact of the matter is it's hard to say that this does not relate to masks when the question here that's asked is, do these masks come in a bigger cup, I need a C cup and these fit like an A cup. I asked them specifically, and we do have testimony on the record that he asked and was refused.
HEARING OFFICER: I'm going to let it in and give it what weight I think is appropriate. So we'll add 24 to the list.

319

All right. Then my understanding is that we'll -- we've had a discussion, and I've agreed that we would do post-trial briefs rather than closing arguments?
MR. EDWARDS: Yes. What I would like to propose is that once I -- well, once we have gotten a transcript of this proceeding that we be given two weeks within which to do a post-hearing brief. I will make a copy of that transcript available to opposing counsel as well, for a small fee.
HEARING OFFICER: Okay. And I know you're opposed to that. I understand that. My goal here is to let -- I'll be honest with both of you. I tend to let evidence in rather than exclude it, and I tend to let people make their arguments rather than exclude them. So I'm going to defer to letting you have your say on paper, and we'll do it that way.
I do want to let you know I'm going to be -- two weeks from today I'm going to be out of town. So that may delay our -- for about a week.
MR. EDWARDS: Well, let's ask about how long before we'll have a transcript.
(A discussion was held off the record with the court reporter.)
MR. GODFREY: Your Honor, this meeting has

320

been recorded on Zoom today. We can make the recording available immediately. We're happy to do that.
HEARING OFFICER: Let's do that. I like that. I mean, you'll still have your transcript for appeal if you'd like.
MR. EDWARDS: Yeah.
HEARING OFFICER: But if you'll make the Zoom recording available.
Let's set a date. I mean, I think everybody would like to get this done sooner rather than later, right?
Okay. So get the Zoom out in the next day or so. That puts two weeks is when I'm actually out of town.
MR. EDWARDS: When will you be back?
HEARING OFFICER: I will be back on the 12th of May.
MR. EDWARDS: What day of the week is that?
HEARING OFFICER: That's a Wednesday. Do you want to have it back on the 14th of May?
MR. EDWARDS: That's fine.
MR. GODFREY: Can I address procedure on this?

HEARING OFFICER: Yeah.
MR. GODFREY: If we were giving closing arguments, because I bear the burden, I would have the last word. I'd like the opportunity to see their brief and be able to respond appropriately. So that's really the way the process works.
HEARING OFFICER: I think that's appropriate. So -- okay. So Mr. Edwards, your brief would be due on the 16th [sic].
How much time do you need, Mr. Godfrey?
MR. GODFREY: Five days.
HEARING OFFICER: So let's make it the following Friday, the 23rd [sic].
MR. GODFREY: Great. And I'll get a decision out as quickly as I can after that.
MR. GODFREY: Thank you, your Honor.
MR. EDWARDS: Thanks.
(The hearing concluded at 5:22 p.m.)
* * *

REPORTER'S CERTIFICATE

I, VICKY McDANIEL, Registered Merit Reporter and Certified Shorthand Reporter in and for the State of Utah, do hereby certify:
That on April 21, 2021, the foregoing proceedings were reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said proceedings is set forth in the preceding pages;

I further certify that I am not of kin or otherwise associated with any of the parties to this case and that I am not interested in the outcome thereof.
WITNESS MY HAND this 3rd day of May, 2021.

VICKY McDANIEL, CSR, RMR

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(G) 58:1

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05 243:6
06-2020 260:20
07-2020 294:13
0800 291:21

1

1 6:23 19:3,13 23:17 24:2,4, 22 31:1 39:4 42:2 71:10 74:1 84:21,22 85:20 86:18, 19 87:5 89:14 90:8 91:21 105:7,23 111:16 117:1,2,21 139:6 149:15,19 150:21 152:12 153:14,19,24 155:17,18 157:11 161:7,13 171:20,22 172:12,13,24 178:5 216:17 249:23 256:1 259:2 264:7 272:16 273:17 284:1 301:5 315:14,15,18
1.B 84:23 91:12 150:23 151:2 155:17,18,25 277:4
10 216:20 220:16
100 221:25
1010.6 86:10 291:9
1010.8 153:15,25 273:17
1015 20:13
1016 20:11,12,13 39:14,15, 18,20 40:15,17 41:3,5,14, 16,23,25 42:12,21 43:2 62:9,17,24 160:25 161:4 162:17 163:14 165:22 168:16,25 169:2,11 170:15 171:16 172:16,19 180:12 181:8 198:24
1016.1 47:16
1016.2 42:12 63:8
1016.3 63:12
1016.3.1 63:17
1016.4.2 43:21 212:4
1016.5 44:22 47:1
1016.6 184:9,10
1016.6.1 163:19 169:16 183:16 193:2
1016.6.2 54:20,25 56:17
1016.6.3 60:20
1017 19:22 20:4,13 30:17 39:3 40:3 42:5 64:24 121:19,22 152:4 160:21,22 161:7,17 162:11 167:15 168:22 179:21,24
1017.2 39:4 161:8,13,19
1017.3 30:17 64:25 152:6
103 42:7,8 55:8 147:11 148:3
103.3 17:18
106 47:21 48:23 49:6 64:19 162:7,9,11 167:25 169:12 179:20 180:5,6
10:27 70:12
10:35 70:12
10th 234:17,19,21,24 286:15
11 96:21 97:18 98:7,11,20 104:23 107:11 110:11 282:3 296:22
11-hour 87:16 99:17
11/09/2020 260:20
116 7:19
11:30 93:12,17 269:5,18 291:21
11:46 124:23
11:52 124:23
11th 97:20,21 219:19 235:15 288:24 292:8
12 3:5 43:8 55:10 148:5
12- 87:17,24 99:18
12/15/2020 274:11
12/28/2020 274:12
12/4 269:17
1220 291:20
125 3:14
1270 7:22
12:02 92:8
12:18 145:4
12:30 93:12,17 269:6,18
12th 219:20 283:18 320:18
13 79:6 96:2,3 206:7 225:4
134 3:15
14 85:20 103:23,24 139:6 200:25 250:7 256:2 264:10 272:14 274:22 280:19,23 293:9 298:18
142 212:8
143 163:17
144 54:25
145 3:17
14th 283:6 320:22
15 22:10 83:25 85:20 229:25 256:13 265:11 273:22 301:10
15th 139:7 250:5 255:23 257:8 258:25 274:4 310:18 311:7
16 71:17,18 105:6 231:14 284:1 301:12
16.A 90:20 91:13 96:20 97:11,15 282:2
16th 321:9
17 71:7 237:22 243:7 288:22
1700 76:5 286:8
18 38:6,8,11 54:7 121:9,10, 12 141:2 235:20 257:3 258:12
18.9 272:14
1800s 299:1
1840 284:2
187 280:22
188 3:18
189 3:18
18th 219:20 283:25 290:24
19 26:19 209:8,9 272:14
194 3:21
1988 194:14
1990 13:3
1993 13:3
1997 194:16
19th 290:23
1:01 145:4
1st 194:18

2

2 20:19 30:17 31:2 85:2,12 86:7,9,18 87:3,4,19 88:3 89:7,13 91:20 96:19 131:14 150:23 152:13 153:15 154:1 155:16 178:3,4 212:4 282:21 301:2 315:14,15,18
20 17:13 22:10 37:19 42:9 43:6,7 55:9 100:21 127:22 147:11 148:2 237:22,24 300:4 315:15,19
20-year 38:12 257:13
2000 13:23 16:4
2002 194:16 244:8
2004 243:4
2005 13:4,6 71:7 194:17
2006 13:24 26:22 29:10,13, 17,24 30:2,6,10 34:23 82:12 116:23 124:1 146:13 301:10,12,13 312:3
2007 216:2
2010 208:15
2011 208:15 209:8 312:4
2016 312:5
2017 141:2 217:17,19 218:8,9,25 219:1 221:10 225:12 237:20,24
2018 16:4 17:2,9 26:23 207:8 209:8,15 211:11
2019 16:4 194:18
202 3:24
2020 54:4 69:2 71:14,21 74:5 85:14,18 86:2,13,25 87:1 88:3,8 90:9,13 92:7,14 100:15,16 105:2,6,22 107:12 109:11 139:7 174:24 216:20,25 217:16 218:8 219:23 220:15 225:12 231:12,13 237:18 248:11 250:5 256:12 258:25 259:13 264:11 265:10 274:4,6 282:7 283:18 286:15 290:23,24 297:20 314:7
2020-25-(5)a.i 294:14
2021 18:24 29:17,23 30:3,8 37:18 171:14 174:17 272:18 276:25 300:7
209 3:21
20th 76:4 274:6 276:8 308:3 310:17
21 20:9 37:20 39:19 42:11 47:2 54:24 163:14 183:15 212:3,7 236:12 315:15,19
2149 289:17
215 4:2
21st 74:5 76:11 219:20
22 86:11 87:13 99:15 105:14 219:15 291:14 315:15,19
2230 289:18
22nd 219:19,21 235:2 292:14
23 92:6 108:2 231:12 268:1 269:11 295:4 315:15,19
234 4:2
238 4:3
23rd 26:22 29:10,13 30:10 105:1,6,22 231:13 235:25 297:5 301:10 321:13
24 37:21,22 68:10 96:4,5 110:12 279:13 315:20 316:13 317:6 318:6,25
24-hour 87:17,24 99:18 178:7,16
242 4:5
244 4:6
246 4:6
247 4:9
25 186:11 187:8 204:20,24 248:4,9,17 315:16,19
255 4:9

256 4:10
258 4:12
25th 26:22 69:2,3
26 37:18 300:7
26th 37:20
270 4:13
271 4:13
272 4:16
28 12:23
28th 219:21 235:9,12 236:17 286:6 291:19
29 131:13,15 134:12,19,25 135:19,21,22,23,24 136:10, 12,17,24 137:7,8,23,24
298 7:22
29th 107:12 219:19,20 236:7 248:10 292:25 297:3, 20
2:30 289:24
2nd 283:23

3

3 19:25 30:16 31:3 39:3 40:4 43:11 64:25 90:13,19 96:18 99:8,11 114:3 152:4,14 154:1 161:7,15 282:1 315:14,15,19
30 37:7 248:17
306 4:16
30th 109:10 289:11,23
31 194:21 237:5,12
31st 216:20,25 218:22 219:21 220:15 229:13 284:22 298:10
320 7:20
33 146:3
35 245:16,23
3:22 242:4
3:30 242:4

4

4 24:1,3,4 86:10,19 87:2,19 88:6,7,8,12 89:17 92:14 99:13,21 101:9 154:2 291:9 315:14,15,19
4- 87:16 99:17
40 67:22 145:3
42 7:21
47 67:7
48 67:7 76:6 239:18
4:11 271:23
4:16 271:23
4th 71:14,21 85:14,17 86:2, 13,25 88:3,25 90:9,13 92:7 173:21 259:13 267:22 268:18 270:15,17 271:15 274:14 280:5 282:7,14,20 291:16 294:16 295:21 296:13 310:1

5

5 102:25 103:21 104:17 110:17 154:2 204:24 259:2 292:19
5:22 321:18
5th 18:24 37:20 54:4 85:18 171:14 174:17 256:12 264:11 265:10 266:20 272:18 276:25 286:13,17,21 288:24 301:13

6

6 37:18 104:19 110:18,19 116:21 205:10 294:12 300:7 315:15,19
6:30 107:18 166:15

7

7 82:12 104:22 107:11,19,20 108:6 109:10 149:20 154:4 171:23 172:13
70 3:7
72 76:7
73 3:10
73.33 204:25 205:1,8,9 206:2
74.54 248:18,19
75 206:5
76 206:8,9
76.67 205:1,7
78 3:10
7:00 303:7
7:20 261:24 271:4,13
7:30 107:13,15 283:4 297:2, 21

8

8 74:2
80 3:11 290:6
81 93:13 105:24 268:16 269:22 270:1 295:8
84 3:13 72:3 105:25 195:6 231:22,23,25 236:23
85 201:10 208:16

9

90 290:6
914 103:1 154:3 292:19
96 96:5 110:12
97 35:23
973 7:20
98 146:8
9:50 109:11 290:1,3 297:2

A

a.m. 70:12 107:19,20 108:6 124:23
ability 135:1,9 162:24 226:22
absent 55:12 60:25 148:25
absolutely 35:9 36:1 83:1 190:16 223:17 233:22 312:21
abuse 274:1
academy 250:11 305:2
accept 42:15,19 43:15 63:9 106:4,11,14,16,17,19,22 115:1 232:7 264:6
acceptable 139:5
accepted 115:3,14
accepting 115:22,25
access 133:24 134:1 266:5
accommodation 68:3 317:11,12
accordance 42:16,20 43:16 63:10
account 98:16
accountable 226:24 252:7
accumulate 134:15,19 135:2 137:7
accumulating 129:11 135:4
accumulation 131:17 134:13 136:3,13,14,15 137:2
accurate 224:25 235:7,18, 23 236:10,15,20 237:1,10, 14
accusation 183:12
accusations 162:19,20
accused 31:9 55:3 56:24 63:24 64:6 155:23 159:3 160:12 167:11,18 281:8 300:23
accusing 32:13 159:10,16, 25 163:6
acknowledge 18:17 253:22
acknowledges 99:4
acquired 142:8
act 67:24 133:14 163:1 164:4 222:11 305:24
acting 118:17 119:2,7 163:10 208:9 217:21 289:14 304:19 305:15,24 306:16 314:12,17
action 14:25 15:2 19:23 24:7,14,24 25:1,14 26:20 30:18,23,24 31:19 39:6 43:12 44:17,19 51:14 55:11 58:2,3,4,9 63:23 64:4 65:1 84:23 85:1,4,5,10 86:11 87:13 90:20 95:18,25 96:20 97:11 101:18 102:10,15,19 103:20,21 104:17,19,21,23 107:11 113:22 117:1,19 121:19,23,25 122:5,22 127:20 134:12,18 135:9 136:23 137:8 141:6 148:7, 25 150:7,9,23 151:1,12,20 152:3,8,10,12 153:1 154:24 155:6,17,18 156:12 158:12 160:21 161:10,22 162:12,18 164:9 169:19 173:20 174:23 177:3,9,20 178:3 179:14,16, 24 185:2 188:7,8,16 189:3 190:3,4,25 191:3,21,22 192:11,12,24 199:17 200:19 201:8 212:16 213:9 215:1,7 226:13 245:6 246:21 249:14 254:3 261:15 263:2 273:22 277:3 282:2 288:7 291:14 292:24 296:22 301:5 312:3
actions 22:25 34:21 47:5 115:1 122:8,13,21,25 123:12,13,16,21,24 124:2 125:5,13 141:20 149:21 150:6,15 151:5 153:4 162:22 170:15 180:16 190:9 195:13,18 218:4 221:18,24 227:14,19 251:17 252:4 255:5 261:18 263:18 265:25 312:11
actively 275:12
activity 104:24 110:11 296:23
actual 131:5 153:6 154:12 186:19
add 294:23 306:19 318:25
added 113:14
adding 113:11
addition 29:17 154:17 176:5 177:4 180:18 191:1 223:24 243:18
additional 190:22,23 205:18
address 10:19 42:15,19 43:15 47:5 63:9 135:20,22, 24 137:18 301:21 320:24
adequate 284:24
adjacent 262:15,24

admin 35:21
administer 39:5 161:9,22
administration 51:12 62:15 146:24 188:4 225:9 251:20,22 255:15 279:10 280:2
administrative 19:17 125:10,12 181:20
administratively 59:16,17
administrators 244:20
admission 6:19 11:10 315:13,24
admits 106:9
admitted 10:23 315:23
admitting 9:19 106:22
adopted 155:14
adoption 17:21
adult 54:5,7 256:18 257:3 265:16
advice 83:14
advise 151:2
advised 166:25 208:1
advisor 191:20
affecting 305:8
afforded 59:3 168:23 179:12,21 180:11
afternoon 275:3 286:8
age 67:9,11,15
agencies 13:1
agency 105:1
agree 33:4,10 39:19 65:2 79:22 98:18 99:6 133:10 163:24 167:21 179:19 223:12
agreeable 6:1
agreed 201:21 319:2
ahead 25:20 70:15,25 76:15 123:6,9 130:6,7,11 189:10 231:8 251:4 276:16 292:2 298:12
ahold 76:15
air 229:2
alarm 109:16,17 289:2
align 220:22
aligns 239:14
all-or-nothing 181:10
allegation 25:8 61:7 63:13 86:18,19 87:19 90:12 99:20 103:21 104:17,21 105:4 107:11 125:21 143:11 150:22 153:24 166:1,9 168:20 169:3 184:17,21,24 185:3,5,8,11 229:5
allegations 24:25 27:4 31:20 39:13 40:7,14 55:22 56:3 61:6 62:2 63:19,25 100:14 102:22 105:9,15 112:4 136:3 137:20 150:10 153:23 160:10 162:7 164:21,22 165:3,5,7,10,13 168:17 171:19,23,24 172:8, 12,23 173:16 174:25 175:15 176:7 180:4 181:8 184:13, 16 199:25 272:19 273:7
allege 136:2
alleged 43:24 44:4 115:12 164:10 169:20 170:1 171:5 212:11
alleging 44:16 212:14 214:24 215:6
allergy 12:1 179:6
Alley 227:3
allowed 132:25 133:9 134:15 188:6 197:19 198:1, 3 205:6 296:16
allowing 82:14
altercation 263:6
alternative 171:1 263:23
alternatives 170:25
ambulance 196:17 296:6
amenable 70:5
American 222:15
Americans 67:23
amount 8:3 34:21 37:3 220:11
ancestor 299:5,8
and/or 96:5,6 110:13
answering 158:5
answers 59:9 123:4 136:9 198:7,14 202:10
antagonistic 223:5,14
antagonize 222:12 223:2
antagonizing 222:13
anticipate 24:12 26:24
anticipated 24:15,18
anticipating 23:13
anxiety 279:3,5,8 280:2 317:21
anxious 318:13
anytime 37:12 51:3 292:21
apologize 57:22 174:14 179:6 282:5
apparatus 93:13 210:18 262:8 269:7,18,21 270:2
appeal 7:22 14:5 135:12 316:8 320:6
appearance 128:23
appearances 5:5
appears 74:4 128:22 193:21 204:3,5 221:15 269:16 282:9
appellant 5:8,19
appendices 155:14
applicable 17:23 42:17,21 63:11 161:3,4 164:14 165:22
application 200:18
applies 95:21 103:22 168:17 313:3
apply 91:9 102:20 150:10 162:10 165:2 169:2 312:25 313:1,19
appointed 48:24,25 49:1
approach 94:13
appropriately 210:17 265:8 321:5
approved 77:16 205:13,22 206:9 307:12,22 308:16
approvers 205:12
approximately 252:8
April 69:2,3 194:18 301:13
arbiter 180:20
area 5:14 128:12 262:15,18, 24 295:10
areas 91:2 148:1 155:1 256:17 265:14 269:2
argue 83:2 305:3
argument 6:17 214:13 300:19
argumentative 194:1 231:4 234:10
arguments 5:24 319:4,15 321:3
arise 151:5
arrived 292:25 293:17
articles 298:22,25
as-needed 246:16
asleep 105:25 108:16 231:21 241:8 266:14 297:7, 8,13,17,24
assertations 172:3
asserted 308:2
assertion 167:23 185:4,14
assertions 120:3 141:15 165:10
assess 233:6
assessment 138:3 237:15
assigned 90:21 96:21 211:5 229:24 238:21 282:3 299:18
assignment 273:20
assignments 291:11
assistant 36:14 144:4 182:25
Association 220:12 295:14
assume 68:22 231:22
assuming 32:18 296:12
assumptions 193:22
attached 10:4 11:6 20:15, 16 26:17 27:5 112:19 137:21 172:25 173:14 174:17 216:7
attachment 20:17
attachments 174:9
attack 279:8 302:23
attempt 276:25
attended 111:25
attention 125:13 128:24 156:7 242:25
attired 291:12
attitude 79:15 114:4 115:14,17,19 221:15 241:19 259:20 260:5 302:3 305:7
attorney 6:15 21:12 36:21 110:25 111:11,17,20 300:11,13 309:19 314:1
August 100:15 109:10 113:7 203:22 219:19 286:19 288:18,24 289:11,23 314:6, 21
authority 17:21 18:1 147:13 164:23 185:1
authorization 216:12
authorized 164:11 169:20
availed 126:2
avenue 180:6
avenues 46:4
average 248:21
aversion 317:20
awake 290:12
aware 13:19 14:10 21:1 35:7 38:14,19,23,25 41:12 43:24 44:3 47:21 48:23 49:5,10,16,21 54:2 59:2,5, 13 60:6,19 64:20 66:21 67:1,8,10,13,18,23 68:1,6 69:9,12 76:2 78:14 113:23 126:4,25 127:6 139:21 141:18 142:2,3 159:11 167:4 188:14 189:2,4 204:6 212:11 230:10,20 231:16 232:17 251:9 263:9,12 269:5 272:25 278:4,9 279:10 291:3,6
awful 275:4 276:23 284:9

B

B.J. 208:16
babies 207:15
baby 207:14
back 15:3 29:17 41:1 42:11 43:6 55:8 60:23 63:6 68:23 70:9,13 74:2 77:14 80:15 82:1,12 84:10 88:2,6 89:6, 13 105:22 106:2,7 107:11

109:14 124:25 145:3,5 146:13 166:21,22 174:22 178:10 182:4 183:15 195:22 196:18 199:19 205:14,19, 23,24 206:1 210:1 217:19 219:1 221:10 224:10 227:1 230:11 232:5,14 250:10 251:23 252:5,6 279:19 293:2 294:1 297:23,24 299:3 302:23 303:17 309:5 320:16,17,22
back-to-back 289:25
backer 236:13
background 146:2 194:12 215:24
backing 226:17 236:12
bad 52:19 77:9 81:9 115:17 132:18 206:2,22 305:1,6,7, 13
badgered 90:15 282:8
barely 12:1 70:24
barring 269:25
base 140:25 316:14
based 27:16 33:24 35:1 44:15 79:16 120:7 121:23 122:11 142:5 147:25 151:13 155:4,6 156:3 162:18 172:24 173:12,16,19,22,24, 25 174:9,12 175:1,17,18,25 190:8,17 193:22 204:11 212:13,23 213:16,20 214:2, 18,19,24 215:5 227:13,21 228:10 230:25 237:15 264:12 308:24 309:7
basic 220:18
basically 18:19 86:16 182:20,24 201:12 233:13 243:7 309:8
basis 7:12 10:16 11:18 22:19 55:12,18 60:25 66:20 79:16,20 106:9 120:2,14 127:13 132:23 133:1 148:25 149:4,5 183:19 188:19 246:16 258:24
Baskin 275:20,25 276:2
bat 277:19
battalion 16:7 35:20 63:22 65:19 69:21 72:5,13,14 73:5,22 75:21 78:21 79:6 80:21 118:16,19,21,23 141:4 166:25 201:15 205:17 207:23 208:9,25 209:21 210:6 261:14,19 273:19 274:8 276:10,11 283:9,10 302:22 305:14,20 306:14 308:10,25 309:1
batteries 239:21
battery 239:22 280:20
bay 262:8,10 268:19 296:6, 12
BC 77:2 284:3
Beales 82:13,15,23 83:4,7, 12
bear 321:3
bed 107:13,15 207:7 289:24 296:25 297:1,21 298:1
bedrest 275:11,13 304:9
bedroom 93:7 109:11 278:24 290:2,7 291:23
bedrooms 290:6
begging 117:12,15,22
begin 100:15
beginning 116:22 227:25 233:8 307:12,22
behalf 5:7 267:5
behaving 49:13 53:20
behavior 34:23 82:24 86:1 111:12,20 112:7,19,25 113:13,16,21,24 114:3,14 116:22,24 117:7 118:4 122:12 123:22 124:11 129:6 139:5 151:10 156:8 177:9, 11 187:19 195:14 201:13 205:20 221:9 224:13,14,15 227:9 261:16 263:2 277:6 300:13,25 301:2 302:2 303:13,19 309:25
behaviors 102:7 112:16,22 219:2 310:4
belie 114:4 302:3
belief 225:16 263:16
believed 157:20 261:18 308:23
believes 221:18
bell 211:13
bias 53:2,5,8,25 54:10 162:24 181:21
big 35:15 98:10 127:14 210:9 295:25
bigger 68:14,17 279:14,21 304:16 317:11 318:19
biggest 264:2
binder 6:23 84:25 85:22 256:1 299:14 315:14
bit 6:10 67:20 146:1 147:12 148:6 177:12 179:24 203:20 206:10 207:10 226:4
bitch 275:25
bitching 275:24
bleeding 275:12
blindsided 10:8
blood 275:12 286:22 287:18
Bloodborne 288:25
Blue 306:4
board 7:22 31:15 148:20,21 199:19
boat 287:24
bold 273:24
book 71:8 266:6
booklet 10:21
boots 293:9,11,16 294:1
borderline 238:23,25
bottom 17:19 29:11 39:7 43:8 54:24 55:9 71:13,16 86:9 87:4,6 109:10 111:5,15 146:18 148:4 150:21 212:8 220:16 225:4,5 231:14 250:7
boulevard 195:6 293:15
bound 35:24
boundaries 224:9
Bountiful 13:4 38:17 194:13 206:17 246:9 298:23 299:24 300:1 302:10 311:24
box 284:19
boxes 299:15
boy 54:7 242:21 243:17 257:2
brake 293:10,11 296:7
brakes 265:6
brand-new 295:9
break 34:3 69:16,20 70:8,11 124:21 144:11,13,21 169:24 242:1
breathe 263:8,11 279:6
breathing 279:5,7
briefing 86:14 89:1,11 262:2
briefly 6:12
briefs 319:3
bring 176:23 189:21 190:12 191:16 192:11,15 243:13 289:8
bringing 164:17 188:8
brings 284:19
brother-in-laws 182:7
brothers 182:6
brought 27:8 100:8,10,11, 12 133:23 156:6 166:13 191:19 231:17 249:2 297:14
brush 302:20 303:2,6
buck 18:19
bugged 225:19
building 166:14
bullet 89:14
bunch 201:12 298:16 299:12
bunker 210:10,12
burden 6:3,4,5 119:19 159:21,24 321:3
buried 299:22
business 295:14
busy 289:23 308:14

C

calendar 276:17
calipers 296:7
call 5:2 8:10 11:21 16:21 18:25 74:8 77:2,24 145:7,18 165:11 166:2 170:1 171:23 174:22 176:22 194:5 196:14 200:10 209:19 215:14 242:5 245:2 249:19 271:24 272:18 274:5 275:5,17,19 276:2,4, 18 277:21,25 283:8,10 284:3 298:1 303:3 307:25 308:24 314:6 315:12
call-in 310:15,17,19
call-off 76:17
callback 274:6 275:18 276:5
called 8:2 12:4 70:18 73:18 75:6,10,11,12 82:23 83:13 84:17 133:7 145:10 194:8 196:21 201:22 215:17 242:7 247:15 253:20 257:23 272:2 275:7 276:7,15,19,24 300:17,18 308:4,8,9 310:25
calling 19:1 40:20 75:19 76:19 178:24 229:20 274:25 275:14 304:8
calls 207:12 266:2 269:25 283:2,5 289:25 297:22
canceling 286:24
canyons 266:5
capacity 19:6
captain 14:4 16:5,6 49:12 54:3,11,16 65:18 66:8,9,16, 22,23 70:15,22 71:3,5,6 75:21 82:13,14,21,23 83:2, 4,7,10,12 85:18 86:4 88:10, 17 89:8,13,16,19 90:10 94:12 118:17,19,20 119:15, 17,20 121:8 129:23 130:1, 19 139:8 140:8 141:3 146:8, 20,22 166:25 174:2 187:9, 15 194:17 195:5 200:20,22 201:9,11,23 208:19,25 213:10 217:19 227:3 233:16 242:11 244:4,6,13 246:14 247:12 255:22 256:3,12,14 257:21 258:3 261:14 273:3, 19 274:4,5,6 275:16,17,18 276:4,5 277:8 280:6 282:12, 21 283:8 286:7,14,15 291:20 292:10,15 293:2 302:20 305:15,16,20,21,23, 25 306:17 308:17 314:12
captains 13:11 33:3 35:19 66:13,18 143:5 199:1,2 200:15,20,25 226:23 227:5 243:21 244:10,12 298:3 306:3 307:1,11
car 92:13,19 239:21 267:23 268:18 270:6 296:8,10

Card 306:4
cardboard 299:15
care 23:5 106:6 115:7 166:18 196:16 202:18,19 203:2 207:14,25 230:24 231:2 232:14
career 49:19 53:22 197:13 229:8
career...multiple 116:23
Carlsen 274:5
Carlson 275:17 276:4
Carol 275:20,25 276:1
carried 65:5
carry 238:6
carrying 222:10 224:16 285:4,16,17,22
case 6:3,4 7:17,19,20,21 44:18 49:11 55:13 61:4 73:1 100:9 106:10 108:12 119:11 135:5 142:7 164:14 191:6 240:18 297:4,21 300:14 316:2,9,22
case-by-case 10:16 11:18
cases 117:12 153:6 154:18 165:2 191:4,5
casual 259:20 260:5
categorize 298:25
Catten 5:3
caught 29:19,21 30:3 298:7
caveat 160:5
Cemetery 293:25 300:1
Centerville 300:1
Chad 4:4 242:5,6,13
chair 297:18
chairs 297:12,14,15
challenge 167:20
chance 5:21,23 32:20 105:8 264:8 316:11
change 114:15,16 116:13 122:17 124:5,6 148:21 158:23 177:8,11 303:17,18 305:8
changed 34:23 123:22,23 124:10 148:20 149:11 199:8
chaos 190:11,13 191:16,18, 19
chaotic 192:3,15,19
characterization 130:10 182:22 214:5 318:10
characterize 168:13
characterized 237:13
characterizing 127:24 129:9
charge 142:21
chat 207:20
check 29:12 30:7,9 72:21 90:9 226:2 239:5,6,13,14,17 260:11 264:21 265:1,2,5 277:14 280:6,18,19,21,22 281:1,2,3,9,13,14,15 282:11 284:2 286:8,11 289:17,18 291:3 301:1,11 304:15
checked 76:5 283:12 286:16
checks 71:22 72:24 90:14 114:6 116:6 118:12 206:24 228:15 235:10,16,21 238:14,22,23 239:3,9,10 240:2,3,8,9 280:5,13 282:8, 13,21 283:7,16,19 289:11, 16,21 290:24 291:4 300:22, 24 302:5 304:11,13 313:2
chief 5:15 8:5,10,14 9:4,9 11:21 12:8,13,14,17,18 16:6,7 17:20 18:6,7,19 19:7, 16,17 21:4,7 32:1,9,18 36:13,14,16,20 51:12 54:17 56:5,9,13 62:16,19 63:22 64:22 65:19 69:21 70:9,23 72:6,13,14,16,17 73:5,14,22 74:5,22 75:21 76:7,15,16 78:3,16,21 79:6 80:21 84:10,12 92:22,25 93:19,23 104:5 109:2 110:23 111:4 118:16,19,21,22,23,25 119:10,11,13,14 125:4,8,9 126:13 128:8 140:16 141:3, 4 143:24 144:4,5,8,18 145:8,17,18 146:1,9,15,23, 24 147:4,12,14 148:17,20 149:13 163:2 164:11 166:13,16,25 169:20 170:10,13 174:21 180:18 181:24 182:25 183:6,7 185:2 186:3,6 189:14 201:15,17,18 202:6 205:17, 24 207:23 208:9,25 209:22 210:6 211:19 219:10,12 230:21 243:17 251:25 252:9,10,19,20 261:14,19, 20 267:23 268:10,18 273:19 274:8 276:10,11,15 279:20 283:9,10 286:14,25 295:20 296:17 300:7 302:2,11,22 303:11 304:13,18 305:14,20 306:14,15 308:8,10,14,18, 21,25 309:1
chief's 147:13
chiefs 35:20
child 256:22
children 207:13
chin 94:20 95:5,8 295:6,16
choosing 58:13
Christopher 4:11 257:22 258:5
circumstance 8:15 99:4 109:3 128:19
circumstances 37:2 52:15 155:4,6 180:9,10 185:19 187:14 192:16 215:8 270:5
cite 136:23 154:14
City 7:19,21 13:4 194:13 206:17
claim 32:6 123:16 150:1 168:24
claimed 154:7 156:21
claiming 165:4
claims 105:16 138:20 185:24 316:2
clarification 177:13 246:17
clarify 81:6 94:15 159:18 172:15
clarifying 148:15
class 278:14
classic 222:5
classification 63:17
claustrophobia 317:21
claustrophobic 68:8 318:11
clean 8:14 93:13 269:21
cleaned 296:5
cleaning 269:6,18
clear 7:23 8:16 130:13 159:24 160:3,5 174:14 175:14 181:3 227:19 228:1, 8 251:12 253:1 298:10
cleared 209:21
clearer 30:6
client 5:9,19 79:13 187:3 271:20 317:9
clock 200:25
close 198:15
closed 201:19 277:23 298:5
closed-door 139:9 250:11
closely 139:22 140:6 198:21 251:10 252:18
closing 5:24 319:3 321:2
clue 287:11
co-workers 303:22
coaching 176:24 191:3
coat 210:13,15,17 294:2
code 103:2,3,4,8,9,13 292:20
cold 296:14
collectively 99:10,21,22 195:1
combine 25:12
combined 13:8,10 25:11 170:6
combining 243:5 285:12
comfortable 306:5
command 33:7 125:6 193:7,18 202:23 203:12 243:12 245:19 314:5
commence 184:6 216:19
comment 244:9,15,25 245:10 246:8 267:3
comments 77:15 205:18 246:13
Commission 67:15
committed 202:4
common 195:25 196:5 207:1 223:11 224:13 250:22,25 262:18 269:2 295:19
communication 21:18
compare 85:2 224:22 248:20 265:23
compared 34:1 256:21
compelled 223:6 225:1
compensated 57:2
competencies 174:24
complainant 164:8 169:11, 17 170:7,16 183:17,18 185:13,18,19 213:17,22 214:21 215:2,9
complaining 51:2 52:4
complaint 30:21 44:15,24 45:1,3,8,14,20 46:2,4,8,9, 11,17,22,23 47:5,6,22,25 48:13 50:3,8,9,11,19,24 51:4,7,10,19,21,23,25 52:2, 13,18 53:6,10,16 54:15 62:24 63:21 64:11 83:10 163:23 164:13 165:19 169:22 183:19 185:21 189:23 190:13 195:9 196:25 197:3,17,21,25 198:7 212:13,22 213:2,4,6,8,9,12, 16,20 214:2,17,23 215:5 240:22,23 246:25 254:8,12, 14,22 255:5,14,16 258:19 274:11 295:25
complaints 20:11,12 42:13,15,19 43:15,22,23 44:24 45:5,7 46:17 47:2,4,8, 18 48:6 49:7 60:21 63:9,12, 20 64:5 163:16 164:17 212:5,9,10 240:19 253:24
complete 60:21 61:3 90:15 127:21 205:15 206:23 238:15 239:13 240:9 282:9 283:18 286:7 289:11 298:17
completed 286:19 288:18
completely 7:17 8:7,14,21
completing 220:20 238:20
complexity 64:8
compliance 17:23 76:3 79:10 80:2 91:23 94:21 128:9,15 168:3 176:24
compliant 270:19 308:24
complied 18:21 19:11 75:24 81:2 262:11
complies 47:13

comply 80:5 82:20 86:4 88:5 89:8,15 90:10 91:22 114:8 207:18 262:5 264:4 267:2 271:3 277:12,13,14 280:7 282:12 292:10
components 213:11
compound 25:24
compounded 226:7
computer 280:13,18,25 281:8,11,12,17,24 283:11, 16 290:19,20 299:13 304:12 308:13,22
computer's 304:14
concede 241:15
concern 119:5 304:21
concerned 77:19 127:19 199:21 233:3 250:16 301:6 309:16,18,23
concerted 245:7
concise 114:12 130:16 176:12
concluded 112:3 321:18
conclusion 39:23 40:20 45:22 46:1 61:7 121:14,18 137:10 157:6,12,15 158:1 168:2 178:25 179:4
conclusions 111:19 186:7 300:12
condition 280:20 317:20 318:11
conduct 8:3 42:14 47:19 79:19,23 129:13 130:18 131:1 134:4 237:13,14,17 247:6 316:16
conducted 56:25
confer 21:2 183:3
confirm 76:16
confirmed 77:24
conflict 35:4,11,12,13 36:3 181:16 182:5 193:14 201:25 203:14
conflicts 35:8,24
conform 55:12,19 60:25 149:1 263:19
conformed 191:1
confront 294:4
consideration 6:19 8:17 22:24 53:3 115:6,8 135:7
considerations 312:25
considered 8:21 11:4 14:21,24 15:1 17:8,20 24:25 25:3,7 30:25 44:19 81:21,24 90:19 94:21 97:16 98:14 122:1,14 152:11 175:12 177:20,21,24 267:14 282:14 290:16
consist 63:12
consisted 117:15
consistency 31:18 64:25 151:16 200:18
consistent 31:17 32:2 67:3,4 85:8,9 135:18 199:19
consistently 199:20
consolidated 13:8
consolidation 13:25
constitute 63:15
constitutional 222:14
construction 262:9 293:22 294:19
consulted 209:13 261:13, 14
contact 286:14,16 308:10
contacted 308:20
contacting 77:25
contained 112:23
contemplated 10:1
content 17:21
contents 186:12
context 11:12 244:9 245:11,12,22
continually 224:9,19 264:3 266:11
continue 82:23 119:25 122:20 123:25 201:16 202:7
continued 3:13 84:19 121:24 122:12 123:25 209:24 227:14 294:16
continuing 70:4 116:23
contractors 262:9
contrary 7:18
convenience 155:11 158:19
conversation 22:6 82:24 222:16,19 228:21,22 243:10,11 246:8,12 253:8 262:23 279:15 285:24 286:1,3 310:18 311:3
conversations 200:14 229:17 246:12 252:9
coordinated 149:23
copped 123:1
copy 10:20 23:6,22 57:8 94:16 260:17 319:9
cordial 127:12 140:22
core 174:24
corner 71:17 74:3 148:5 163:16 250:8 274:12
correct 15:6 19:4,7,20 20:2 21:12 22:13,14,21 23:18,23 25:15 26:7,15 27:25 28:10, 16,17 30:19 34:14,15 35:8, 25 36:6,9 44:1,5,20,21 45:19 46:9,14,19,20 48:8, 14,15,25 49:4 50:11,12,14, 20 51:7,23 54:16 55:19,20 58:4,5,6,7,10,11 59:14,15 61:12,13 65:2,3,6,8,22 66:3, 4,6,7 67:3 69:7 71:4 73:5,23 74:6 76:9 77:17 78:3 81:3,7 84:3 85:10,11,14,15,23 86:5,6 87:7,21,22,25 88:16, 20 90:18 91:5 92:14 96:16 102:10,15,16,20 104:6,7,13, 15 106:23 110:14,15 111:5, 6 112:11,24 113:10,13 116:24 117:9,10,16 118:1, 25 120:25 121:20 124:4,16 125:14,20 131:7 132:16,19 137:19 138:3,7 139:25 140:17,18 141:16,17 143:3, 4 147:5,14,17 150:1 156:21 157:2,22 158:6,8,9,10,18,23 159:17 162:8,14 163:25 164:5,13 165:24 166:3 169:23 171:16,17 173:1,7,8, 16,18 175:16,25 176:8 178:15 181:9 183:1 186:2,4 190:1,15,19 191:11,12,14, 15 193:19 195:23 203:2 205:19 206:11 212:17,20, 21,24 213:4,5 214:5 217:1 222:24,25 223:3,16 225:21 231:24,25 239:7 240:12 241:9,18 244:22 251:17 252:4,16 255:24,25 261:3,4, 16 264:14 266:17 267:13 268:24 270:4 277:9 281:1 294:21 301:18 303:14 304:1 315:18
corrected 227:9 281:5,11 283:17 300:22 301:8
correction 85:3 107:10 113:22 203:5
corrective 14:24 15:2 19:23 26:20 30:18,23 31:19 39:6,8 65:1 84:23 85:1,4,5, 10 86:11 87:13 90:20 95:18, 20,25 96:20 97:11 99:15 101:18 102:9,15,19 103:20, 21 104:16 117:1,19 121:19, 22,25 122:5 134:12,18 135:9 136:23 137:8 150:9, 23 151:1,12,19 152:2,7,10, 12 153:1 155:17,18 158:12 160:21 161:9,10,22,23 162:2,12,18 173:20 174:23 177:9,20 178:2 179:14,16, 20,24,25 188:7 190:9 191:3, 20 192:10,24 195:13 199:16 200:19 201:8,13 226:13 246:21 248:25 249:14 254:3 263:2 273:22 277:3 282:2 288:7 291:14 292:24 296:22 301:5
correctly 113:21 151:19 155:9 205:3 251:14
correlation 285:21
counsel 10:21 32:21 33:6 98:18,22,24 147:20 183:4,7 234:25 319:10
counsel's 315:14
counseling 176:24 191:3 232:18
count 101:16,25
couple 11:1 154:21 173:13 181:3 189:16
court 7:23 12:9 144:24 145:15 242:12 247:20 319:24
courteous 49:7 50:1,7 217:13 224:22,25 230:15 237:7 265:23
courtesy 69:25
cover 77:14 315:25
COVID 277:24 278:6 286:23 290:5,15 296:15
Covid-19 294:13,20
create 151:15 193:15
created 13:5
credit 266:1
crew 93:5,25 109:12 118:7 207:24 222:6 228:3,6 233:16 274:5 275:16 289:4, 7 293:16 294:19 295:11,15, 17
crews 93:15 269:7
Crewsense 76:5,25 77:16
criminal 59:18
critical 31:19 65:1
Cross 220:13
cross-examination 3:10, 14,18,21 4:2,6,9,13,16 78:12 125:1,2 188:1 209:3 234:14 244:2 255:20 270:12 306:23
culminating 283:8
cumbersome 210:12
cup 68:17,18 279:21 318:19,20
current 12:12
cut 267:19

D

daily 86:14 89:1 269:16 289:15
Dane 3:4,12 5:15 12:3,11 84:16
dare 238:15
date 69:1 86:22,24 92:10 105:15 211:8 234:25 235:13 271:12 274:11 292:13 311:5,7 320:10
dated 74:5 139:7 216:20 258:24 260:20 272:17 300:7
dates 217:25 233:9 275:2
Dave 16:6 110:23 125:10 205:12 206:9
David 3:6,16,23 70:17 145:9,16 211:22

Davis 5:14,16,20 6:6 10:2 13:2,4,5 45:2 146:7 147:2 182:14 208:16 216:1 225:18 246:10
day 37:21,22 65:18 71:22 72:2,4,6,20,23 75:2,23 76:6, 10 194:17 220:18 239:6,9, 10,13,17,25 240:2,3,8,9 250:9 256:15 259:6 260:3 261:23,24 262:1,7,14 264:4, 23,25 265:1,2,12 267:17,22 269:8 271:6 278:23 280:17, 18,21,22 281:1,2,3,10,13,14 282:21 283:6,19,22,24 284:2,5 286:10,11,22,25 287:1,3,21,22,25 288:1,13 289:11,17,18,21,23 290:8 291:24 294:5 297:6 299:23 304:11,12 308:22 320:13,19
day-to-day 118:5
dayroom 297:16
days 24:8,14 25:1,15 37:19, 20 131:6 132:8 159:5,15 180:16 206:22 238:13 259:10,15 261:10,12 274:25 275:4,8 280:15,16 281:17 287:21 300:21 308:4 321:11
deaf 179:7
deal 119:4 126:16 208:23 304:20
dealing 31:3,8,14 152:15
dealt 155:2 237:19 314:5
deceitful 49:22 53:23 230:13 234:1,5 284:23
December 54:3 74:5 76:4 85:14,17,18 86:2,13,25 88:3,8,25 90:9,13 92:7,14 100:15 107:12 113:7 139:7 173:21 203:23 216:20,25 218:22 219:21,23 220:14 229:13 233:9 237:5,12 250:5 252:12,13,14 255:23 256:12 257:9 258:25 259:9, 11,13,15 264:10,11 265:10 266:20 267:22 268:18 270:15,17 271:15 274:4,6, 14 276:8 280:5,8,15 282:7, 14 284:22 291:16 294:16 295:21 296:13 298:9 308:3 310:1,17,18 311:7 314:7,22, 23
decide 102:17 182:25
decided 156:10,23 157:1,2 302:22 308:23
decides 51:4
decision 6:7 7:25 8:6,11, 18,23 9:12,16 10:3,6,7 30:23 38:3 62:12 128:1 133:14,22 142:9 147:16 164:9 169:18 170:7,8,9,12, 17 174:5 183:5,10 321:15
decisions 31:1 147:20 152:12 164:24
decontaminate 270:2
deep 186:17 279:6,7
defer 319:16
defiant 80:19 82:14
Define 238:4
defined 45:1 191:23
definition 162:1,2
definitions 178:11
degree 142:7 147:19
delay 281:7 319:20
demeanor 34:19 35:1
demote 309:22
demotion 15:16 24:8,15 25:2,15 96:5,6 110:13 117:6,9 132:8 180:17 192:14 301:14
denial 316:2
denied 317:12 318:8
deny 9:23
department 5:20,22,23 10:25 12:22 13:13 18:21,22 31:2,3,5,8,14,25 32:13 33:7 35:5,15 36:5 38:5,16,18 39:5,10,20 40:4,16 41:4 42:12,14,15,19 43:1,11,15, 23 44:3 45:3 47:19,20 55:4 60:7,23 61:18,24 63:8,15 64:7 79:10 80:3,6 81:3 86:3 89:7,15 91:1,23 92:3 94:6, 22 95:21 99:3 108:1 118:6 122:7,21 125:5,9,10,15 126:22 127:15,17 128:18 129:14 130:25 131:8,25 134:1 141:19 142:4 143:15 144:7 145:23 146:11 147:2, 17,21 148:13 152:14,15,16 154:4 157:8,13 160:16 161:9,21 162:4,25 164:3 167:5,13,14,24 176:17,20 180:1,8 184:5,24 185:1,4, 12,14,16 188:4 191:1 194:14 198:18 199:13 201:18 209:12 212:10 218:20 226:14,25 237:24 239:4 240:15,16 242:15 244:7,13 245:1,3,4,8,13,24 246:15 247:24 253:19 254:11 257:6,12 258:10 262:4 267:10 270:20 272:10,20 284:17 285:10 286:4 290:20 291:13 294:12 296:2,11 298:12,15 299:1,6, 9,13 301:7 303:18 307:3,14, 15,17,20 309:16,17,18,23 311:22,25 312:7,23 317:23
department's 8:9 11:6 21:11 87:10 221:19 298:22
department-issued 292:6
department-wise 290:22
departments 13:5,9 33:18 243:5
depend 229:3
dependable 206:18
depending 64:8
depends 51:24 52:2 109:22 110:1,5 166:4 181:13 207:3 213:7
deputy 12:18 16:6,7 19:17 21:4,7 32:1 36:13,15,16,20 51:12 62:15,19 78:16 92:22, 25 93:18,23 104:5 110:23 111:4 118:22 119:10 125:8, 9 126:13 128:8 144:4,8 145:8,17 146:15,23,24 170:13 181:24 183:6,7 189:14 219:10 230:21
description 118:18 205:19 220:21 305:19
designated 64:7 144:3
designee 164:11 169:21
desired 126:7
desk 95:15 109:1,2 132:4
detail 160:10
detailed 60:21 61:3 113:6 155:13
detailing 149:20
details 16:16,17 62:22
Detection 289:2
determination 17:3 34:10, 13,16,18 36:17 37:9 52:17 62:18 136:5 150:9 151:21 184:20 220:4 316:22
determine 25:13 33:13 51:13 52:21 94:17 151:22 184:22
determined 30:23 150:3,4
determines 62:15 64:4
determining 30:18 152:7 162:12
deviating 64:18
difference 93:18 142:12 168:11 205:7 224:5 263:14 264:25
differences 123:15
differentiation 184:17
differently 155:2,4 227:6 287:20
difficult 80:8 82:22 118:18 259:19 260:4,17 300:16 304:9 305:19
difficulties 118:5
dining 262:14
dinner 276:22
direct 3:5,7,10,13,17,21 4:2, 5,9,12,16 12:6 15:21 70:20 73:20 84:19 145:12 164:12 165:14,16 166:2,10 169:21 173:5 183:13,18,23,25 184:7,18,22 194:10 198:8 215:19 242:9 247:1,17 258:1 267:17 272:4
directed 307:11
direction 238:5
directions 235:10
directive 95:21,22,24 96:1 114:9 154:4 260:20,21,23 262:4,25 267:9 294:12
directives 259:21 260:6,7
directly 59:10 147:13 150:19 162:20 163:3 166:6 168:19 169:11 181:14 185:24 195:4 198:11 201:22 232:22 267:5,8
dirt 293:24
Disabilities 67:24
disability 68:2 273:23 274:1
disagree 186:8
disagreed 223:1,8
disallow 66:24
disciplinaries 132:5
disciplinary 7:25 9:12 10:4,11,14,17 16:8 19:18 20:15 22:25 23:8 24:7,14 25:1,14 33:8,14 44:17,19 51:14 125:5 126:6,21 127:1 131:5,12 136:24 141:3,6,7,9 147:21 151:4 154:24 164:9 169:18 177:2 178:9,14,17 184:12 188:8,16 190:18 191:14,22 192:12 202:17 209:14 212:16 213:9 215:1, 7 312:2,6,11,22
discipline 7:5 8:6,9,12,18 9:4,25 13:15 14:22 15:5,7, 10,13,14,19,25 16:10,24,25 17:10 22:21 23:23 28:21,23 29:4,22,24 30:4,8,13,19 31:5,6 32:12 33:2 34:22,24, 25 35:3,10 36:17 41:20 53:15 59:12 65:4,7,12,14, 20,21 66:2,14,18,19,23,24 67:3 87:11 93:20 106:10 107:6 120:7 128:19 129:17 131:19,24 136:1 138:1 142:5 143:7,8 151:16,17,21 176:17,21 177:10,14,15,16, 18,22,25 178:19 190:24 191:23 199:24 200:19 201:8 226:13 248:25 249:13 258:24 272:21 312:16 317:14
disciplined 7:4 13:12 28:15 30:2 32:5 41:13,23 53:14 64:18 83:20 93:2,21 178:23 179:13,14,15 203:4 278:5,10 301:18
disciplining 23:14 130:25 131:9
discretion 6:9 148:21 192:23
discrimination 67:9,11,16

discuss 6:16 18:13 51:13 66:16,18 78:15 314:8
discussed 5:25 8:5 56:6 61:20 62:4 199:3 210:6 245:13 316:18
discussing 285:1
discussion 16:9 18:12 56:8,13 141:3 223:7 228:12, 16 240:1,7 253:11 257:4,10 285:7 310:20 319:2,23
discussions 56:10 199:14 228:14 306:25
disgruntled 225:9,12 237:23
dismissal 96:6,7 131:20
disorder 207:9
disposition 47:18 132:1
disproportionate 119:18
dispute 312:9
disputed 111:11,20 112:4 300:13
disregard 114:4 148:17 302:3,6
disrespect 85:25 277:5
disrespectful 82:17 83:3 130:5
disruptive 192:3
distinction 165:25 183:24
District 6:6 13:3 146:7 182:15
District's 10:2
divided 154:19
divides 154:25
division 125:6 209:22
doctors 105:24
document 104:3 128:24 138:6,14 174:18 221:3,5,6,7 267:3 274:10
documentation 159:12
documented 44:24 46:17 47:3 102:8 134:21 135:14 138:16 142:20,22
documents 104:9
don 86:15 88:10,17 89:2 291:21 292:16
Donning 291:10
door 201:19 290:12,13
doors 298:5
dorm 290:1
double 29:3 157:24 172:11
doubt 22:9 288:1
Doug 82:13
downstairs 262:7
doze 106:4,12,14,15,19,22 107:4 232:7 241:16
dozed 232:9 236:1
dozing 107:7 232:16,23 241:12
drafted 104:12 149:15 300:9
drain 49:23 53:24 119:24 120:4,13,23 230:14 234:6
draw 265:21
drawn 286:23
dressed 108:8
drive 293:12
driveway 302:13
driving 210:18 264:2
duck 203:17,18,21,25
due 6:25 39:11,16,21 40:4, 17 41:5 137:4 162:5,17 167:8,16,22 168:2,22 171:15 178:21,22 179:17,21 180:1,7,10,23,25 197:18 226:22 271:1 277:24 289:24 296:15 316:2 321:9
duly 12:4 70:18 73:18 84:17 145:10 194:8 211:23 215:17 242:7 247:15 257:23 272:2
duties 90:21 96:21 125:6 211:5 220:21 282:3
duty 37:11 57:1 69:23 75:20,22 78:1 86:11 273:18, 19,21 291:10 296:16 305:4
duty.' 273:24
dynamics 218:13

E

earlier 120:5 127:25 128:8 147:5 166:13 186:4 212:19 263:17
earliest 26:21
early 252:12,13,14 264:5
easier 11:24
easy 37:25 38:3 300:25 304:10,15
eating 278:20,22
educated 243:23
Edwards 3:5,7,10,11,14,15, 17,18,21,24 4:2,3,5,6,9,10, 12,13,16 5:7,19,21 6:18 8:24 9:1 10:18 11:8,19,21, 24 12:7 21:20,25 22:4 25:21 37:4 39:24 40:2,3,12,21,25 41:1,9 46:7 54:22 60:15 61:22 63:6,8 64:15,17 69:15,18,20 70:1,3,7,15,21 73:7,10,14,21 78:11 79:11 80:22,24 84:5,10,20 123:5, 8,11 124:17,20 129:8 130:9 132:22 133:8,16 134:8,9,11 135:16 137:11,23 143:19 144:2,12,16 145:6,7,13 153:18 166:20,24 168:4,12 169:6,8 175:24 179:1,5,11 182:24 187:2,7,22 188:18, 23 189:6,16,19 192:7,8 194:2,5,11 209:1 211:16,18 212:2 214:12,16 215:11,14, 20 231:6,11 234:13,23 235:13 238:3 241:21 242:1, 5,10 243:25 244:10 246:3,4, 6 247:8,12,18 255:19 256:8, 11 257:15,18,21 258:2 270:9 271:10,18,24 272:5 306:21 315:6,8,20,22 316:23 317:1,7 318:1,14 319:5,21 320:7,16,19,23 321:8,17
Edwards' 129:11
effect 117:6 130:8,10 243:15
effective 30:24 122:19 227:15
effectively 221:4
effects 118:4
efficiency 122:6
effort 128:24 138:5,9,12,13, 14 245:7
efforts 116:24
egged 208:21
Eighteen 38:7 247:25 258:11
eleven 98:8 303:4
eliminate 198:13
else's 33:12 60:11
emergency 155:1
employ 60:6
employee 7:22 8:1 9:5 13:13 15:2 17:5 32:5 33:8, 14,23 39:13,16 40:6,13 46:9 49:18,22 53:22,23 63:14 65:20 66:9 68:2,4 107:3,7 125:18,22 139:13 162:7 163:11 167:1,21 178:22 179:12 181:9 190:14 192:22 193:16 195:20 197:4 198:6, 8 199:12 206:14,19,25 207:1 208:10,16 227:20 228:8,11,18 229:7 230:13 234:5 250:22
employee's 7:24 8:8
employees 18:22 39:11,21 40:5,18 41:6 46:25 65:16 106:6 119:3,8,21 122:11,20 133:24,25 138:10,21 139:3 140:6 162:5 180:2,3 196:1, 6,9,11,24 199:16,20,23 200:1 203:11,13 207:17 225:17 229:1 230:5 232:13 240:16 254:4 304:19 307:11
employer 24:7
employment 7:16,24 8:11, 17 9:7 67:9,14,16 79:20,23 122:19 127:19 132:17 146:6
empowered 218:2
EMT 196:14 242:23
en 209:19,22
encounter 199:22
end 5:25 26:18 29:10 84:2 100:15 129:24 130:1 219:23 257:1 265:18 267:1
ended 100:20 103:5 248:10 286:23
energy 49:23 53:24 230:14 234:6
engaged 157:7 266:3,16
engine 90:9,14 210:7 227:24 239:15,23 262:12 265:6 277:14,20 280:5,6,9, 11,12,13,17 281:15,16 282:7,11,13 286:12 289:21 293:8,13 295:9 296:6 300:21 302:19 303:5 313:2 314:10,21,23 315:1
engineer 146:21 218:14 220:16 221:12 225:8 226:8 227:23 229:5 230:12,22 231:17 259:14 262:18,20 301:14 306:6,13
engineers 210:8
engines 303:8
ensemble 293:3
ensue 183:14
ensure 17:22 44:23,25 46:16 219:3 227:23 228:3 239:24
entail 203:6
enter 10:13 188:6,8 238:14
entered 11:1 141:13
entering 71:23
entire 9:15 10:11 17:8 179:7 193:21 218:6 237:12 249:25
entirety 175:24 217:14
entitled 179:17 192:22 226:13
entitlement 225:15,25
entitlements 226:5
entrance 302:21 303:1,10
entries 131:3
entry 9:6
Equal 67:14
equally 199:16
equipment 16:21 29:12 30:8,9 103:2,10 114:7 118:14 122:10 227:24 228:3 239:15 260:11 265:4 281:15 283:12 292:20 293:1 296:11 301:11 307:24
essentially 127:21
establish 310:7,11 311:1, 10

estimate 37:5 81:14 108:21 144:11
evaluate 187:20
evaluation 174:24 187:16 205:4,15,21 248:7,12 249:1, 14
evaluations 186:13,15,25 195:20 204:21 248:5 306:7, 9
evening 289:18
event 68:1 168:23
events 173:21 304:17
eventual 7:25
eventually 146:20
everybody's 73:15 206:21
everyone's 166:14
everything's 143:10
evidence 6:5,15,19 7:10,13 9:20 10:24 11:4,12 27:4 61:7 117:22 132:24 137:19 151:8 157:16,21 158:1 228:7 311:18 316:12,18 318:5,12,15,16 319:14
evidenced 173:4
evidences 53:5
evidencing 53:25 54:10 114:16
exact 197:15 233:9 241:18 310:3
examination 3:5,7,10,11, 13,15,17,18,21,24 4:2,3,5,6, 9,10,12,13,16 12:6 70:20 73:20 80:23 84:19 134:10 145:12 147:4 189:18 194:10 212:1 215:19 238:2 242:9 246:5 247:17 256:10 258:1 271:9 272:4
examined 12:5 70:19 73:19 84:18 145:11 194:9 211:24 215:18 242:8 247:16 257:24 272:3
examples 221:20 223:21, 22
excavated 293:24
excellent 242:23
exception 99:2
exceptions 307:2
exchange 129:25 130:1 267:1
exclamation 77:1,3
exclude 319:14,15
excluded 9:21
excuse 13:3,17 16:7,20 41:16 50:22 51:9 87:6 121:3 154:25 163:18 315:14
excused 298:3
executive 141:11
exercise 167:22
exercising 222:14
exhibit 6:23 17:13 19:3,13, 25 20:9,19 23:17 24:2,3,4, 22 26:19 27:11,20,25 29:9 30:16 39:3,18 42:2,11 47:2 54:24 55:9 64:25 68:10 71:10 74:1,3 76:20 84:21,22 85:2,20 86:18 92:6 105:7, 14,23 110:17,18,19 113:22 116:21,25 117:1,2,20,21 131:14 137:21 139:6 147:11 148:2 149:15 150:21 152:4 153:17,19 155:17 157:11 161:12,15 163:14 171:20 172:13,24 175:8,18,19 178:3 186:11 187:8 204:20, 24 206:7 212:3,7 216:16,22, 23 219:15 248:4,9,17 249:23 256:1,2 259:2 264:7 268:1 269:11 272:16 274:9, 16,17 279:13 284:1 295:4 300:7 301:5 318:6
exhibits 10:21 11:1,2,5,10 27:5 28:1 61:8 112:20 176:4,6 315:14,24 316:17
expect 271:4
expectation 224:19,20
expectations 253:2,12 262:1 264:5 270:24 271:5
expected 27:11,22 55:11, 17 60:24 148:25 166:18 292:21
expects 307:20
experience 49:18 53:22 204:11 225:7 229:7 242:20, 22 265:20
experienced 220:17,25 221:10 237:15 251:1 279:9
experiences 217:17 271:1 293:9
expertise 147:25
explain 16:19 132:20 167:18 168:9 263:4 264:25 270:23 273:15 280:1,7 289:19 309:15 310:19
explained 268:24 269:2 271:4
explaining 300:25
explanation 104:16 220:3
exposing 294:19
exposure 292:22
express 114:14 303:16
expressed 221:17,23 223:8,9
expressing 222:19 223:25
expression 120:5
extent 10:12 110:1 304:5 316:25 317:5
extraordinary 208:3
extremely 265:2
eyes 173:7

F

face 67:2 68:7 88:4,13,14, 21,22 91:21,25 92:1,2,23 93:1,8,19,20 94:9,18,19,20, 21,25 95:3,4,7,10,13,19 96:8 260:23 261:3 262:11, 12,13,21,25 263:5,8,10,21 264:13 267:11,23 268:19,22 269:1,3 270:7 277:13 278:15,16,25 279:3,6,16,22 280:3 294:18 317:10,14,15, 22
fact 5:23 8:22 31:18 53:19 69:6 76:3 83:1 86:12 118:24 164:2 190:17 207:7 222:22 240:2,8 241:15 257:11 263:9 264:3 265:17 279:11 290:7 291:16 309:4 314:11 317:8 318:14,16
factor 10:3 17:3 23:22 34:4
factors 30:25 127:6,14 152:11 264:2
facts 190:22,23 300:15,19
factual 6:4
fail 90:23
failed 86:3 88:4 89:8,15 90:10,13 91:22 277:12,13, 14 280:7 282:7,12
failing 30:9 31:22 55:12,18 59:12 60:25 148:25 267:16
failure 29:12 30:7 114:6,7,8 211:4 234:17 235:2,9 260:9, 10,19 264:18,21 271:2 273:25 274:1 294:17 301:11
fair 29:16,22 30:8,12 155:6 193:15 206:6
fairly 65:7 187:20 284:13,14
faith 163:10 164:3,4,16 193:17,18,22
fall 91:3,8 297:6
fallen 241:7 297:13
familiar 147:1 188:11,21 198:16,19,21
family 299:5
fatal 115:17
favorites 36:2 65:9 199:23
favoritism 36:8
February 26:22 211:11
federal 17:23 24:6 42:17,21 63:11,16 103:2,3,8,13 292:20
fee 319:10
feel 124:10 221:3,5 222:12 223:6 225:22 233:5 234:3 237:21
feeling 206:13 229:23 276:23
feelings 230:1 231:1 304:1
feels 125:19
fell 146:5 266:14 297:8,24
fellow 46:8
felt 54:4 82:25 125:22 196:11 203:17 206:15 207:21 223:4 225:1 229:13, 18 231:1 244:22,24 252:4 256:17 263:5,7,24 265:14 275:4 309:11
fifteen 233:15,17
figure 98:1 101:18 102:1 113:2 159:9,21 213:14 261:15
figured 101:15,17
file 6:20 9:11 10:11 22:25 23:3,6,12,15,17,22 33:22,25 34:1,4,6,7,9,12 73:5 98:15 126:1 129:21 131:4 142:11, 15,23 162:25 163:12 185:21 188:12,22 189:3,5,12 232:15 246:25 249:4 255:14,16 258:23 274:10 284:22
filed 32:21 204:9
files 14:12 32:4 33:13,16,17 45:14 201:12,13,14
filing 75:1 188:14
filling 213:6
final 8:25 140:9 206:8 248:19 251:16,18,21 252:24 257:9 284:21 303:24
finalize 205:25
finalized 28:3,4
finally 289:17 297:24
find 27:10 37:17 43:14 45:14 76:19 80:8 85:1 92:11 104:1,2 162:16 168:25 169:1 182:13 196:20 208:3, 5 250:3 299:7
fine 11:18 70:7 144:21 145:21 268:25 271:22 307:18 320:23
finish 165:8
finishing 278:20,22
fire 5:14,15,16,20,22,23 6:6 8:5 9:4,9 10:2 11:21 12:13, 14,16,18,22 13:2,5,8,11,13 14:9 17:20 18:5,7,19 19:6 34:16,18 37:10 38:18 45:2 54:7 64:21 65:19,25 75:9 108:5,6 109:12 121:10 126:10 142:10 145:17,23 146:2,3,4,7,8,11,22 147:2, 12,14 148:17,19,20,21 163:2 164:11 166:12 169:20 170:9 182:15,25 184:24,25 185:2 194:13,19 198:17 199:12 209:19 210:2,11,16 215:25 216:1 225:18 227:24

239:4 242:14 243:5 245:13, 18 247:23 249:19 257:3,6, 11 258:10 259:21 260:6 266:2 268:6,7,14 272:10 278:7 289:1 295:25 299:8, 24 302:11,19 303:10 304:17 305:2
fireable 98:19,20 110:13
fired 79:13 102:1 112:17 136:6 312:16
firefighter 50:23 146:14,17, 19,21 163:6 185:8,9 196:13 197:6 206:16 216:4 218:15 226:12 232:3 242:23 262:17,19 297:8 301:15 302:20
firefighters 35:19 126:21 132:15 133:25 236:24 245:8,15,16 248:20 271:5 286:4 291:3 302:13 305:2,7, 9,13
firefighters' 133:13
fireman 194:14 299:10,24
firing 64:1 79:17 120:2,14 192:14
fit 68:17 279:21 318:19
fits 68:24 279:24,25
five-year-old 224:17,18
fix 304:15
fixed 280:25 281:6,22,24,25
flag 299:22
flippant 259:20 260:5
floor 107:19,20 108:7,10
fly 67:2
FMLA 217:20
focus 119:20,25 120:1
follow 39:20 40:17 41:4,8,9, 18 42:23 43:1,5 60:22 61:3 64:22 117:13,23 148:16 167:24 181:7 189:17 201:15 202:2,7,9,14 223:20 226:2 235:10 240:16 253:2 254:19 260:10,20 262:25 267:9,16 273:25 276:3 305:3 310:21
form 14:21,24 15:7,9,18 44:25 45:3,14 46:2,9,18,19, 22,23 79:9 80:1 150:13 153:4 185:6 213:6,9
formal 44:23 46:16 64:2,5, 11 246:25
format 60:22 61:3,4
formed 127:4
forms 185:7
forum 229:2
forward 126:10 150:7 218:19 247:7
fought 196:15
found 23:15 77:12 78:5 149:24 151:5 152:2,21 154:13 165:12 171:19 172:23 173:13 186:15 239:21 262:12 276:4,13 279:4,5 294:10 299:21,25
foundation 188:20
fourth 43:7 55:9,10 148:4
Foxboro 201:10 208:17
frankly 19:1
free 208:22 242:24 275:12
Friday 269:17 275:1 321:13
front 9:15 10:6 16:12 17:16 71:8 93:13 131:13 209:25 234:20 269:6,21 280:11
frustrating 106:3 232:6 256:16 259:19 260:4 265:14
fuel 280:19
fulfill 306:12
full 6:20 12:8 38:14 106:1 161:19 163:19 194:15 210:4,20 232:1 239:14 248:15 258:4 272:6,13 307:6,8
full-fledged 317:19
fun 73:11
function 218:20
functioning 216:4
functions 245:19
future 122:13

G

Garrity 59:18,21 60:7,17
Gary 4:15 5:8,9 15:22,25 17:4 19:1,3 22:12,16 31:6, 12,21 32:7 34:17,18 36:17 37:10 38:4 48:7 49:13,16,21 50:3,5 53:16,20 55:23 57:12,18 58:15 60:17 61:19 62:3 63:19 67:6 68:6 69:9, 14 72:8 74:9 75:6 76:18,21 77:5,16 80:5,10,16,18 81:1 82:13,14,25 91:24 93:20 96:12 103:11 105:25 107:2 114:25 119:9,25 120:3 121:2,5,6 122:17 127:11,13 130:4 138:14,22 139:2,9,10, 20 140:15 142:9,14 157:7, 12 164:17 165:5,11 171:20 186:13,14 187:9 194:23 195:9,12 196:3,8,9 197:1 201:7,12,22 203:24,25 204:21,25 205:5 206:14,15, 17,24 209:14,23 210:14 216:8,18 217:24 218:3 219:6,13 220:1 224:22 227:6 231:21 232:19 233:20 237:2 240:1,7,22 241:2 242:18,22 248:2,5,7,14 249:5,7,15 250:10,11,19 251:9,12,21 252:2 253:11 256:5,15 257:4 258:13,24 259:7,11,16,18 262:5 265:12,23 268:24 270:25 271:24 272:1,6,8 284:1 289:14,25 311:12,16
Gary's 33:19 34:1,5,6,7,9 49:11 56:1 61:4 62:1 76:19, 20 93:24 116:1 127:11 189:3,5 204:23 209:7 210:9 237:13 266:1
gas 292:25 293:10,12,14,17, 19,21,23 294:9
gauged 151:21
gave 23:10 76:21 140:8 149:8,10 159:4 186:7 198:11 202:14 211:8 212:19 248:18
gear 210:10,12 283:13 294:8
genealogy 299:4
general 10:16 18:10 80:2 114:4 125:4 126:20 128:23 133:25 140:15,19 147:24 163:22 206:13 245:1,5 271:3 302:3,6
generally 55:11,17 60:24 79:9 126:25 142:8 147:3,22 148:15,24 150:14 167:13 183:2,3 267:16 270:20
gentle 191:5
get all 294:8
get along 36:6 83:3
give 12:8 23:11 26:5 27:23 29:16 45:11,24 81:14 82:18 102:13 108:21 111:13 147:19 151:16,17 153:3 160:9 177:4 200:5,8 215:24 221:20 232:18 242:16,17 245:11,12 258:3 261:9 264:7 268:15 272:6 307:2 316:10 318:24
giving 321:2
glasses 17:14
goal 319:12
goals 299:19
Godfrey 3:10,14,21 4:2,6,9, 13,16 5:13 7:14,15 9:2,24 11:9,11 21:14,17,23 36:21, 22 39:22 40:19 45:21 60:11 63:1 64:13 69:20 73:9 78:13 79:19,25 80:20 84:7,8 110:25 123:3 124:25 125:3 130:13,14,17,18 132:24 133:2,12,24 134:6,15,24 137:9,25 141:12 143:22,23 144:19,21 168:1 178:24 179:3 182:21 187:24 188:2, 24 189:2,13 192:5 193:23, 25 209:4 211:14 214:4 231:4 234:9,15 235:1,14,15 237:25 241:24 244:3 246:1 255:21 256:7 270:10,13 271:7 306:24 313:18 315:3, 10,11,21 316:12 318:2,5 319:25 320:24 321:2,10,11, 14,16
Godfrey's 80:25
good 22:3 52:19 70:6 73:12 132:18 149:3,11 163:10 164:3,4,16 193:18,22 203:19 206:2,6,18,25 239:19 266:6,7 284:14,18 297:9,11
gosh 101:23
government 24:7
governor's 222:7 285:1
grab 17:14
graphic 219:16
graves 299:21,25
great 67:11 98:10 254:17 266:2 321:14
greater 63:24 64:6
Greg 16:7 21:9 36:20 105:19 118:22 125:8 261:20 279:20
Gregory 119:17
grievance 125:16,24 126:3 162:25 163:12 188:15 189:3,11 204:9
grievanced 28:7
grieved 189:25 190:4,15 204:8
grounds 151:11 154:23,24
grown 54:5,7 256:18 257:3 265:15
guard 243:13 244:21 299:23
guess 63:6 75:15 79:7 114:11 126:16 136:7 137:16 143:10 148:14 193:11 204:15 207:8 209:8 218:1 222:1 227:8 243:23 245:2,8 246:16 278:21 284:7
guessing 82:7 195:3
guests 307:9
guidelines 47:17
gun 204:1 224:16 285:5,16, 17,23 302:21,23 303:1,10
gun?' 222:10
guy 66:2 92:12 121:10,20 194:3 210:9 242:24
guys 95:16 182:10 243:14 246:9,10 298:4

H

habitual 72:22
half 37:6 38:8 146:25 194:15,21 198:20 216:19 217:2 284:22 287:5 293:3
Halloween 220:12
hand 123:13 244:19

handle 133:15 195:16
handled 316:7
handling 253:24
hang 100:17 270:11
happen 56:15 120:10,11,12 151:13 152:20 163:3 183:13 188:10 197:12 200:16 204:15,16 238:17
happened 23:1 28:12 34:24 58:6 108:19 109:22 141:24 164:25 197:14 198:4,9 204:12,13 208:18 274:21 277:15 287:12 293:6 311:11
happening 163:11 200:6
happy 136:21 159:8 237:23 320:2
hard 144:2 175:5 207:10 274:23 318:17
harder 293:11
hardest 114:25
harm's 118:8
harmful 229:9,11 230:21 231:3
Harmon 7:19
hate 168:12
hazard 292:22
head 12:2 79:5 102:24 195:2 295:18
heading 164:20
health 95:22 146:11 294:13 298:4
hear 12:1 116:8 234:4 247:6 262:6
heard 9:1 126:10 141:1 142:13,16,17 143:1,11,14 183:20 204:10 208:12,14 231:7 239:1 276:10 277:8 305:5 312:5,8
hearing 5:2,3,4,12,17 6:11, 13 7:1,2,14 8:2,24 9:22 11:5,9,17 18:25 19:13,18,21 20:25 21:3 22:2,12,17 24:2, 13,17 31:21 32:15 34:19 36:23 37:9,14 39:25 40:9,22 42:2 45:23 55:24 56:1,4 57:14,15,19,24 58:20,23 60:13 63:4 69:17 70:1,5,10, 13 73:8,13 79:22 84:6,9,12 86:8 96:16,19 98:16 100:14 111:18,23 112:1,20,23 113:6,20 123:6,9 124:19,22, 24 130:12,15 132:7 133:5, 10,18 134:7,17 135:12,20 136:16 137:12,17 139:25 143:21,24 144:9,14,19 145:2,5 148:19 149:11,16 150:22 152:18 153:2,16,20 156:9 157:6 158:4 159:6,19 160:4,15 168:6 169:4 171:11 172:2,5,6,14 173:15 174:8,10,12,16 175:1,7,22 176:8 179:7,9 180:15,23,24 181:6 182:23 187:5,24 188:25 189:9,15 194:4 211:16,21 214:9,14 215:12 216:8,18 219:17 220:6 231:8,18 234:11 241:23,25 242:2 246:2 247:10 257:16, 20 271:22 272:17 273:12 300:11 301:14,22 303:14 313:15,23 315:5,7,10,17 316:4,10,17,20,24 317:3,24 318:4,23 319:11 320:4,8,17, 21 321:1,7,12,18
Hearings 24:5
heated 196:17
held 14:2 216:3 226:23 319:23
helmet 294:2
helped 276:21
helpful 155:22 156:2 230:17 234:2,3
helping 234:2 298:24
hey 116:2 287:1 304:14
hill 302:12
his/her 58:13 273:19
histories 132:17 133:13
history 7:17,24 8:8,11,17 9:5,7,23 10:4,12,14,17 27:5 31:2 33:8,14 52:20,22,25 121:24 126:21 127:1 137:21 141:7,9,19 142:1 152:13 156:3 290:20 298:22 312:2, 6,22
hit 100:17
hold 11:11 92:11 252:6
home 116:3 207:13 276:14
honest 10:9 214:9 234:4 319:13
honor 7:16 11:13 21:17 133:3 192:5 214:4 299:23 315:12 319:25 321:16
hope 44:6,10,12 49:17 67:4 129:10 140:7 193:20,22 229:6
hoped 53:21
hoping 92:4
hospital 196:17 286:23 288:14
hostile 133:8,9
hot 293:3
hour 22:8 37:6 93:12 144:25
hours 37:8,21,22 56:25 76:5 96:4,5 110:12 239:18
house 302:14
houses 302:24 303:9
huge 302:11
hundred 81:15 108:22 238:12
hundreds 298:21
hydrant 303:1,3
hypothetical 222:23 223:12 224:11,15 285:3

I

ice 139:22 140:10 251:10 252:17 257:10 303:23
idea 14:15 67:2,5 76:17 103:13 126:20 129:4 153:3 204:12 252:8 261:25 272:20 297:11
ideals 220:23
identified 299:4,7,9,20
identify 226:23
illogical 168:14
imagine 38:1
immediately 43:24 44:5 122:19 147:10 212:12 227:4 243:4 320:2
impact 142:9
implemented 199:4 201:5
implicate 29:2
implicated 178:21
imply 64:10
importance 199:15 262:3
important 8:12 41:7,9,18 62:8,11 65:4 69:6 73:16 112:14 144:6,7 168:8 240:14,17
impose 87:24
imposed 7:6 178:20
impossible 5:10
impression 140:20
improper 8:14 63:13 65:18 90:20 96:20 125:23 247:6 278:10 282:2 317:14
Improperly 273:23
improve 15:2 221:16 245:24
improved 122:7
improvement 14:18,19 206:10
improving 251:17
inability 78:1 273:21
inadequate 317:16
inadvertently 76:13
inappropriate 52:13 125:23
incident 16:21 30:21 99:3 129:19 210:22 226:17 249:20 261:21 308:3
incidents 32:24 98:25 135:25
inclement 296:11,13
include 8:7 35:20,21 47:4 125:12 316:24
included 28:13 220:18
including 220:19 226:16
incorrect 51:18 63:1 281:10
increase 225:14
increased 245:21,22
increasingly 259:19 260:3
independent 49:1,2,6 50:13 51:5,21 52:3,15 54:14,19 191:17,20 192:11, 15
independently 48:10
indicating 49:13 187:18
indication 24:23 26:6 27:9 106:15 187:19 201:6 268:15 301:20 304:23 318:8
indications 317:10
indirect 267:18
individual 33:19,22 34:12 96:24 110:5 143:9 150:16 154:14,16 162:22 167:11,17 170:21 187:21 190:3 191:6 289:7
individually 26:9 96:23 99:6,8,21,23 101:3
individuals 54:18 65:12,13 128:11 164:25 182:9 191:2 196:15 200:10,11 203:14
inducement 317:21
inducements 59:9
indulgence 187:3
inefficiency 104:25 110:11 296:23
Inexcusable 273:25
infinitesimally 260:18
inform 77:2 281:18
informal 44:24 46:17 63:18, 20,21 64:1 246:11
information 24:9 27:15,24 111:17 129:20,21 133:23 168:16 174:7 192:23 215:5 251:19 300:10 316:21
informed 27:8 56:21 306:15
infraction 50:24 51:10 72:21 143:7
infractions 140:3 142:20, 22
initial 303:3
initiate 44:14 185:22 196:25 212:13,22 213:4 254:8,12,13,22 255:4 258:19
initiated 67:14 75:9 131:25 182:3 245:14

initiates 213:15,19 214:17, 23 215:4
initiating 51:22 59:20 213:2 214:2
input 110:20,22 147:20,22, 24 149:14,16,18
inquiries 47:2
inside 296:8
insights 266:6
insolence 85:25 277:5
inspections 122:9
instance 15:24 17:1,9 29:5 30:13 77:11 83:25 84:3 136:2,23 167:4 185:23 187:8 204:6 261:13 264:1 302:10,18
instances 31:11,22 32:11 66:21 170:11 193:3 197:15 199:22 219:7 226:15 230:4 261:1 282:4
instigator 138:12,13
instruct 219:5,12
instructed 219:8,9 240:21 248:23 258:18,22 261:9
instruction 78:18 241:1 255:3
insubordinate 49:22 53:23 83:1 84:1 130:22 230:13 234:5 237:14 238:4,8,19,24, 25 267:5,6,15,20 284:23
insubordination 81:20,21 82:3,6 84:24 85:12 86:5 89:19,24 90:4,8 91:13 99:2 130:20 139:20 150:23 151:2,11 154:18,21,23 155:7,8,18,19,25 178:6 251:7 266:21 267:18 277:4 282:10
intellectual 284:14
intelligent 225:17,20,23 226:6
intend 10:22 229:11
intended 151:15 234:7
intent 52:19 76:19 77:24 126:9 127:4 152:18
interaction 129:22 196:2,7 221:4
interactions 219:4 223:11 258:13,15
interest 181:17 193:14 218:23,24 221:19 300:24
interested 116:15,16
internal 225:15
interpret 267:6
interpretation 148:18 213:14
interrogation 58:14
interrupt 226:18
intersection 209:20
interview 56:20 57:7,9,10, 12,16,20,24 58:16 273:10
interviewed 57:3,8
interviewer 57:5
interviews 56:24 57:6 58:1, 8 273:2
intimidate 285:14,20
intimidating 285:17,19,22
introduction 61:6 259:12, 25
inventory 265:3
investigate 48:3 164:12 165:19 169:22 193:5
investigated 30:22 48:11, 17,19 62:25 64:5,12 100:25 101:2 163:13 164:21 165:4 184:13
investigating 50:2,8,9
investigation 47:18,24 48:4 50:14,16,25 51:1,6,11 53:12 54:19,21 55:4,22 56:8,12,21 58:21,25 59:11, 14 61:2,5,9,12,16,19,21,22, 25 62:7,10,13,14,18,21,22 64:9,11 67:14 78:8,15 83:22 163:4,23 171:18,24 172:1,7, 12,16,17,21 176:5,14 181:15 182:2,11 183:6,12, 14 184:7 185:22 272:25 273:4
investigations 55:25 56:2 60:20 162:18 180:19 184:12
investigative 181:7
investigator 48:24 54:15 59:18 274:13
investigators 48:25 49:1
involve 132:9
involved 15:25 16:14 55:25 56:9 132:1 141:5 180:19 209:13 266:3,5,16
involvement 164:10 169:19,25 170:20 171:5
involving 209:14
irrelevant 7:17 11:15 79:17
isolation 99:1
issue 7:5 22:20 66:14 75:16 76:22 77:6,20 91:5 107:14, 16 141:14 143:2 145:23 186:24 192:4 196:22 197:3 201:24 207:21 210:5,18 219:16 241:11,14 249:12 253:3 263:25 264:12 266:21 278:15,16 279:2 297:25
issued 18:14 30:19 32:12 36:24 42:1 59:19 68:8 107:6 157:6 174:17 262:4 307:16
issues 18:13 127:13 183:3 191:10 232:19 236:23 248:24 264:15,17 280:2 284:11 301:18,21 304:16 315:25 317:8
issuing 9:4 19:20 31:6 74:11
item 6:2,13 182:4 273:17
items 16:14 22:13,15,20 23:16 27:15,23,24 28:16,19 150:16 154:12 172:4 174:5 177:2 190:20 231:16 241:2 280:22 288:21

J

January 18:24 26:21 29:10, 13 30:10 37:18,20 171:14 174:17 272:18 276:25 300:7 301:10
jeopardy 29:3
jersey 277:18
job 63:13 82:15 91:18 114:17,22 115:4,9 116:12, 17 118:17 123:15 127:11 146:12 220:21 228:2 238:20 244:23 266:2,7 290:16 305:18 306:6,7
Jordan 7:20
judge 50:20
judgment 10:13 227:11
July 139:12 219:23 229:15 230:18 233:11 248:11 250:21 290:23,24
jump 20:20 239:23
June 301:13
jury 50:20
justification 149:7 226:1
justifications 114:14 225:16 303:12
justified 151:6
justify 32:25

K

Kettle 3:6 69:22 70:16,17, 22 71:22 280:24 282:21 283:4 314:15
kick 206:1
kids 275:9 276:22 308:15
kind 13:15 45:8 51:20 53:25 54:10 64:10,11 78:8,14 96:13 97:9 100:17 106:15 158:22 179:3,11 188:6 196:6 197:17 200:20 202:12,15 206:14 207:9 220:8 229:14 232:18 240:22,25 246:8 249:12,13 250:9 251:19 254:14 255:3 256:20 261:23 272:24 279:3 284:19 286:3 297:9 301:16, 20 304:22 312:5 318:9
kinds 206:21
kitchen 128:12 262:16,24 278:21 295:10,12 297:14
knew 113:24,25 141:8 160:5 207:6 257:14 293:22
knowing 82:22 306:11
knowledge 36:11,12 41:22 78:7 88:13 107:8,9 125:16 141:10 142:8
Knowles 232:3 262:17,19 297:9

L

La-z-boy 297:12,17
lack 119:4 226:7,19,21,22 227:12 304:21
lacked 226:11
lady 298:24
laid 180:11 236:4 270:25 272:21 300:15,19 302:25
Lane 3:20 16:6 187:9 194:5, 7 204:25 217:19 227:3 298:21 306:8
language 59:8 139:23 140:2 217:10
large 176:18 210:9 316:25
largely 226:22
larger 68:20 69:10 263:10, 21
late 16:4 71:22 72:20 73:2 139:18 207:7 210:25 251:5 252:12,14 282:22,24 283:2 286:18 288:17 290:23,24 291:2,4,6 298:1,25
latest 26:22
laugh 297:10
law 7:17 8:16 24:6 42:17,22 63:11,16 67:9,11,16,21
lawful 39:7,9,10 161:10,23 162:3,4 179:25 180:1
laws 17:24
lawyers 21:11,15,21 22:5
lay 188:19
laying 264:5
lead 129:4 132:25 133:9 249:13 259:20 260:4
leading 133:1,2,4,6,11,16 155:7
leak 292:25 293:14
learned 284:17
leave 76:14 217:20,22 273:23 274:1,2,7 276:9,17 277:19 290:11 308:3,16,20 311:14,15 313:7
leaving 199:6
led 63:25 74:14 112:16 261:7,8,21

left 111:18 116:10 127:21 144:15 146:8 199:6 202:5 233:8 239:23 299:16 300:12
left-hand 71:16 74:2 250:8 274:12
legal 6:8 39:23 40:20 45:22, 25 137:10 168:2 178:25 179:4
legitimate 85:25 277:5
less-experienced 119:20
letter 19:12 20:4 25:18,19, 23,25 26:1,18 27:10,12 36:24 37:15,16,19 103:6 110:16 111:10,14 112:13 113:17 114:12 121:15 137:17 159:20 160:7 174:13 300:6
letters 117:5,8
letting 65:13 251:15 319:16
level 170:10,13 191:8,11,14 245:15,21,22 280:20
Lexipol 253:20
lieu 38:21
lieutenant 13:10 194:16
life 265:20 304:16
likeable 206:18
limit 119:19
linear 151:13
lines 293:17,21,23 294:9
list 56:18 61:1 86:2 113:18 117:1 121:23 124:2 153:6 154:6 318:25
listed 32:14 85:13 86:5,17, 19 96:21 113:12 135:19 150:5,6,12,25 154:10 160:19 172:4 174:5,13 175:3,11
listen 111:22 310:23
listened 186:3
listening 70:22 264:22
listing 27:25 151:1
litigation 173:1
live 302:10
local 17:24 42:17,21 63:11, 16
location 273:20
log 47:3,4,7,10,13 139:14 283:6 289:15,17
logged 139:11 250:20 283:11 286:8 288:21 289:18
logging 290:24 291:2,4
long 12:14,19,21 22:4,6 33:9,14 37:1 71:6 80:15 82:1 110:5 129:8 144:17 147:9 194:25 195:2 206:17 217:23 233:5,7 242:14,21 244:6 247:23 248:14 250:9 257:12 258:9 272:10 311:21 314:25 319:22
longer 218:22
looked 17:6 20:10 31:20 34:21 45:13 56:5 72:7 77:15 103:15 105:5 155:4 166:6 203:12 209:20 232:20 284:16
lost 173:22 254:18
lot 20:6,20 80:18 105:13 128:2 137:14 147:23 177:8 242:25 249:24 270:24 284:9,15,17,18 290:19,21 306:3 317:3
love 146:5
lower 74:2 148:5 163:16 170:12 250:8
lunch 144:11,13 208:10,22
lying 141:23

M

M-A-X-W-E-L-L 258:6
made 6:18 7:23 8:19 13:11 30:24 31:20 38:19,23 40:14 48:6,13 50:19,24 51:22 52:18,19 53:10 54:16 55:23 56:3 62:3 63:19 68:3 69:10 77:14,15 105:9,16 112:5 114:24 116:24 117:3 120:3 121:2,13 125:21 128:1 134:3 139:20 141:15 150:3, 4,8 156:7,21 160:2,11 165:5 169:3 172:3 173:2 174:4 181:9 183:12,24 184:20 185:3,8 219:18 227:18,25 228:7 245:10 246:9 251:9 253:1 255:22 256:20 262:2 263:10,14,18 279:10 284:21 286:16 298:10 318:13
maintain 260:11
major 81:22,24 82:3 85:13 86:5 90:8 91:5 97:4 98:10 99:2 107:14,16 109:14,19, 21,24 150:24 151:2 155:19, 25 277:4 282:10 304:8
Major.' 84:24
majority 105:12 126:17 229:16 237:21
make 7:16 8:6,22 9:15 10:15 14:14 15:5 19:11,19 20:6 27:14,21 32:2 43:23 46:3,4,8,11 51:4 52:17 66:13 75:22 76:9 83:12,19 84:24 85:7,21 104:3 108:7 121:11 130:6,12 133:21,22 136:5 142:12 147:20 159:24 164:24 165:25 166:14 168:10 174:15 176:2,12 177:1 181:1,3 183:5,19 185:12 190:25 191:9 195:8 197:17,25 205:18 210:20 212:10 219:5,12 220:4,5 222:12 227:11 228:5 229:1 234:17 240:22 243:23 249:4 251:12,14 252:5 261:17,25 263:1,3 265:3,6 289:24 315:18 319:9,15 320:1,8 321:12
maker 133:14 147:16 164:9 169:18 170:7,9,12,17
makes 51:18 52:13 53:6 62:12 76:7 118:18 168:14 183:9 245:6 305:19
making 8:11 17:3 18:20 30:25 34:12 37:8 45:19,25 50:10 51:7 53:16 68:20 148:21 152:12 184:17 185:14 197:20 219:22 239:20 258:25 261:18 303:22 304:16 310:25
malfunctioned 239:22
man 136:5
manage 54:6 209:6 229:24 257:2 259:19 260:4
management 49:17,23,24 53:21,24 119:18,24 120:4, 13,23 176:23 224:13 226:8, 11,19,21,22 227:12,16 229:6,21 230:14 234:1,6 284:24,25
manager 229:21
managers 121:5,9
managing 225:8 227:6
mandate 65:17 66:1 114:8 222:7 285:1
mandated 294:18
mandatory 42:18 43:1,4, 12,18,19 44:1,7,13 55:5 58:9 148:7,9,11 212:20 213:16
manner 39:7 49:8 50:2,8 90:11,14 161:11,23 277:14 280:7 282:8,12 283:7 316:6
manual 17:22 18:10 19:10, 11 43:8 148:5
March 301:12
mark 187:9,15 238:10,16
markedly 237:18
marshal 146:23
Marshal's 146:11
mask 11:25 65:17 66:1 68:7,15,21 69:10 70:25 88:4,13 91:21,25 92:1,2,23 93:1,8,19,20 94:20,21 95:3, 4,7,10,13,19,23 96:8 114:8 118:15 122:8 128:14 129:24 130:21 139:20 209:6 220:20 222:7,9 251:6 260:23 261:3 262:3,11,12,13,19,21,25 263:5,8,11,21 264:13 267:12,24 268:19,22 269:1, 3 270:7 277:13 278:15,16 279:3,6,12 280:3 285:1,4, 13,16,22 294:18 295:5 296:4 302:5 317:10,12,14, 15,22 318:9
masks 68:16 88:14,21,22 94:9,18,19,25 118:14 128:12,13 278:25 279:16 295:2,6,12,13,16 309:13 318:7,17,18
Mata 94:7,12
match 187:18
materials 219:11
matrix 20:15,22 31:5 84:23 85:1,4,5,10 86:11 87:13 90:20,22 91:3,9,12,13 95:18,20,25 96:20 97:12 99:15 101:18 102:10,19 103:20,21 104:17,23 107:11 110:9,10 131:13 134:12,19 135:9,16,24 136:24 137:8 150:9,12,17,19,23 151:2,7, 12,14,15,20 152:10,16,17 153:1 154:11,25 155:13,14, 17,18,21 156:18 158:12,24 177:9 178:3 273:22 277:3 282:2 291:14 292:24 296:22
matrixes 90:24 91:11,15
Matshu 219:12
matter 5:4,18 10:18 32:22 63:21 64:3 78:15 102:2 131:24 145:19 147:11 176:18 209:14 273:11 316:1 318:16
matters 6:5,8,21 7:1,7,23 23:15 26:21 27:1 32:13 126:17 147:21 224:7 248:24 272:21 273:6 316:4
Maxwell 4:11 54:3,16 85:18 121:8 129:23 130:2,19 174:2 256:3,12,14 257:21, 22 258:3,5 274:13 277:9 280:24
Maxwell's 54:11 213:10
meaning 40:8,12 149:5 231:23
means 14:13,15 55:16 60:24 103:12 133:3 136:18, 19 148:16 167:16 170:6 269:25
meant 113:3 120:22 201:4
measures 131:5
mechanical 265:5
mechanics 265:7
medical 105:23 234:18 245:18 286:14 287:1,10,24 289:10 292:9,12 317:19
mediocre 266:4,13
meet 66:13,16 221:17 234:17
meeting 16:5,23 17:2 66:19 128:1 199:1 226:24 243:21 244:10 250:13 253:11 255:23 256:4 261:24 271:4, 11 314:4,8 319:25
meetings 143:5 199:3

Meg 106:1 232:2 278:21,23
Megan 232:3
member 42:16,20 43:16,23 44:3,16 46:3 47:22 55:3 56:20,25 57:1,6,7,9 58:1,8 59:7,9,19 63:9,24 64:6 178:20 193:6 212:10,15 214:25 215:6 243:11 299:5
member's 31:2 47:22 63:22 152:13 163:24
members 31:24 42:14 43:22 47:19 56:24 57:6 94:6 212:9 273:18 292:20 295:11
memo 74:4,12,15,17,20,24 76:4 78:3,19 174:21
memorandum 274:10
Memorial 299:23
memory 186:18 249:21
men 95:13
mention 88:14,15,21,22 184:6 266:12
mentioned 34:5 317:25
merged 13:5 71:7 82:12
merger 146:7
meritorious 152:21
message 69:3,4 318:6
messages 304:13 308:18
mete 155:6
meted 8:18
method 151:22 179:20
meting 16:25
Metro 5:14,16 13:5 147:2 216:1 225:18 259:21 260:6 284:19
Michael 4:1 215:16,23
midnight 303:3
mind 9:23 10:10 80:15 127:7 128:5 227:4 260:12 271:20 312:21
mine 198:9 205:8
minimum 221:17 226:24 271:5
minor 90:20,21 96:21,22, 23,24 97:1,16 98:3,4,7,8,11 282:3,15
minus 205:21
minute 58:3 309:4
minutes 22:8,10 37:5,6,7 73:10 145:3 187:3 242:3 271:21
mis-called 310:8
mischaracterizes 123:4
mischaracterizing 192:6
misconduct 42:16,20 43:16,24 44:4,15,16 63:10, 13 164:11,21,22 165:3,13 166:1,2,6,9,10,17 167:1,23 168:17,20,24 169:3,10,20 170:1 171:5 184:13,18 185:15,25 188:5 212:11,14, 15,23 213:16,21 214:3,6,8, 18,19,20,25 215:6
misdoing 163:6
mismanagement 121:11
missed 281:12
misunderstanding 30:5
mitigated 127:7
mitigating 8:15
mode 106:1 232:1 302:23
modifications 195:14
moment 126:9
monitors 294:11
month 38:9 281:7 286:19 288:18
months 12:15 38:11 113:9, 11 129:22 139:10 179:7 233:14,18 250:12 272:14 298:18 315:2
morale 122:6,7
morning 72:24 108:6 109:13 220:19 261:24 262:2 264:6 268:25 270:25 271:13 274:24 303:7
Moss 3:9 69:21 73:15,17,22 80:21 174:21 308:17,18
motion 8:25 9:23
motivate 54:4 256:17 265:15
motivation 221:16
mouth 116:2 136:19
move 267:5 277:21 315:13, 23
moved 262:23
moving 150:7
multiple 112:8 117:5,11 139:18 203:1 220:17 226:15 251:5 293:9 301:3
Museum 298:23

N

nail 89:21,23,24 90:24 91:24
names 119:12
naming 197:6
nature 44:25 47:4 56:21 195:14 202:17
necessarily 21:22 136:25 151:7 190:8
needed 19:19 62:10,13 72:8 76:8,10 160:8 167:1 198:11 229:13,18 240:23 246:25 253:12 263:19 266:11 275:8 288:6,21
negative 80:7 81:1,3 112:7, 16,19,22,25 113:13,16,21, 24 141:15 157:24 172:11 241:2 301:2
negatively 305:8
newer 119:20 177:5 245:24
news 307:13
newspaper 298:21,25
night 207:11,15 239:19 283:3,5 289:23 297:22 298:8
nightmare 49:17 53:21 229:6,21 234:1 284:24
nine-year-old 54:5,6 256:18,22 257:2 265:15,19, 24
Ninety-seven 35:18
nods 79:5 102:24
non-complaining 49:3
non-emergency 86:1 155:20 178:6 277:6
non-supervisor 48:11,18, 20 165:18
noncompliance 128:25
noncompliant 140:23
nondisciplinary 191:11
notation 46:12 93:10 230:12
notations 173:14 232:15
note 49:11 54:3 71:14 97:9 113:18 129:16 130:7 131:13,15 139:7,16 141:21 153:9 174:22 188:15 219:17 220:10,14,24 227:15 229:12 231:21 234:17,21,23 235:1, 9,12,15,18,20,25 236:7,12, 15,17,20 237:5,9,12 249:12, 17 250:4,8 251:2 256:3,4 258:23 259:1,12 263:3 265:11 266:1,19,20,23 284:21 289:22 294:15 298:9 299:23 311:1 315:12
noted 130:18 134:21 219:16 249:18 252:23 286:18
notes 49:10 54:3 83:19 85:17 117:24,25 120:24 131:4 134:3,17 139:10,11, 18 149:18 150:2 172:24 173:19 174:4,18 187:17 205:20 216:7,11,22,23 218:3,12,25 219:3,5,8,13, 18,22,25 224:2 229:16 230:11 234:16 239:5 249:4 250:3,12,14,18,19 251:5 263:1 265:10 288:23 303:22 309:8 312:3
notice 6:22 7:8 8:4 10:5 14:12 18:24 19:12 20:24 21:3 22:11 24:1,13 31:21 32:14 39:12 40:6 42:2 55:23 56:3 58:19 76:20 86:7 96:15,19 100:13 111:16 112:23 113:6 139:24 149:15 150:21 152:17 153:1,19 157:5 158:3 159:5 160:3,14 162:6 171:10 172:25 173:15 174:6,8,9,16,25 175:6,12 176:7 180:3 216:7,17 219:17 220:6 272:17,22 273:11 288:23 300:6,10
noticed 8:3 72:7 76:13
notification 102:13
notified 78:6
notify 43:24 44:5 75:21 212:12 273:18 274:2
notifying 159:2 274:8 276:10 309:25
notwithstanding 126:20 127:3
November 71:14,21 219:20,21 236:12,17 252:12,13,14 280:8,14 282:20 291:19 314:22
nudged 297:8
number 97:14 111:19 138:20 163:17 190:8 257:5 300:12
numbered 153:23
numerous 65:16 131:3 138:19 203:23,24 233:19 301:19

O

oath 84:14 186:7 211:21
obey 85:24 277:4
object 7:12 79:11,17 130:9 132:22 133:1 168:1 182:21 188:18 214:12
objection 6:14,18 10:15 11:3,14 21:17 39:22 40:19 45:21 63:5 64:13 79:24 123:3 137:9 178:24 179:2 188:23 189:7 193:23 197:19 231:4 234:9 315:23 316:13, 14
objections 262:6
objectivity 48:4
obligation 167:24
obligations 19:10 37:24
obscure 177:7
observation 166:2,10 168:21 173:5 183:13,23 184:18,22 214:2,7 228:25 229:4 256:21
observations 165:15,17 173:2 227:13 228:24 229:14,17 230:18,25
observe 163:3 254:14 255:12

observed 44:15 181:14 185:24 212:13,23 213:16,20 214:6,18,19 225:7 237:19 254:10,23 255:7 258:21 262:17
observer 183:18,25 184:8 247:1
observes 166:7 169:10 214:20
obstinance 119:4 304:21
obtain 59:9
occasion 79:3 80:10 216:6
occasionally 200:16
occasions 270:19 292:15
occupying 227:21 228:9
occur 51:14 222:23
occurred 75:2 82:9 131:6 261:6,10 316:5
occurring 82:25 237:22
occurs 49:5
October 105:1,6,22 216:2 219:19,20 231:12,13 235:15,20,25 236:7 283:6, 18,25 292:8,25 297:5 314:22
off-duty 296:14
off-going 228:3
offense 31:1 81:22,24 82:3 87:11,15,17,20,23 88:1 96:4,5,6,10,17 97:7,10,17, 20,22 98:2,3,4,5,10 99:16, 17,18 100:1,2,5,7,8 101:9, 13,14,24,25 102:18 110:12, 14 131:10,16,18 134:14 135:11 152:13 155:24 178:5,6
offenses 31:4,8,14 97:18 98:7,8,11,19,20 99:14 100:3 101:16 129:11,12 131:11,17 134:13,16,19,20,21,24 135:2,4,6,14 136:4 137:3,7 152:15
offensive 59:7
offer 38:19,23
offered 114:13 303:12
offhand 121:17 141:25 211:6 249:22
office 56:7 146:12 196:19 201:18
officer 5:2,4,12,17 6:13 7:14 8:24 9:22 11:5,9,17 13:11 22:2 39:25 40:9,22 45:23 60:13 63:4 69:17 70:1,5,10,13 73:8,13 79:22 84:6,9,12 123:6,9 124:19, 22,24 130:12,15 133:5,10, 18 134:7 137:12 143:21,24 144:9,14,19 145:2,5 153:16 166:15 168:6 169:4 175:22 179:9 182:23 184:23,25 187:5,24 188:25 189:9,15 194:4 211:16,21 214:9,14 215:12 217:21 231:8 234:11 238:1 241:23,25 242:2 246:2 247:10 257:16,20 259:14 271:22 289:14 313:15 315:5,7,10,17 316:10,20,24 317:3,24 318:4,23 319:11 320:4,8,17, 21 321:1,7,12
officers 56:6 119:2,6,7,8 162:25 226:9 245:2 281:18 304:19 305:3
Ogden 7:19 146:9,13
older 67:22 244:13 245:8
omitted 315:20
on-duty 295:11 308:21
onboarding 176:25
ongoing 221:9 226:7,15,21
online 299:3
open 74:1 77:15 222:9 285:16 290:12,13 306:3
operations 125:9 126:14 140:13,14 142:21
opinion 39:24 40:21,23 41:11 45:24 50:4 62:13 79:9 80:2 120:5,13,15 121:13 137:11,13 169:2 178:12,13, 20 188:3 198:10,11 222:20 223:8,9,16 224:1,6 304:2
opinions 120:8 234:4
opportunity 11:16 39:12 40:6,13 67:15 162:6 180:3 217:20 321:4
opposed 124:14 152:9 199:25 241:11 246:9 319:12
opposing 10:21 319:10
option 58:16 121:25 122:1
options 37:23
order 5:3 25:13 39:21 40:17 41:5 48:3 95:22 137:4 167:21 213:14 234:22 238:5 240:21 267:9,11 294:13 316:8
ordered 59:11,17
orders 85:25 277:5 305:3,4
organize 298:23,24
organizing 220:12
original 94:14,16
originally 27:19
outcome 126:7
outlined 220:21 240:4
outlines 272:18
outlining 224:3
outranking 218:14
overnight 239:22
overrule 40:23 45:23 79:24
overruled 133:5,18
oversaw 197:4
oversleep 207:2
oversleeping 208:4 211:1
overslept 206:23
overtime 72:3

P

P-O-W-E-R-S 145:17
P.3d 7:19,21,22
p.m. 92:8 145:4 242:4 271:23 321:18
pages 74:2 216:19 217:2 284:22
paid 28:5,6 128:24 301:16
panic 279:8
pants 210:14 307:15
paper 173:7,10 319:17
paragraph 24:5 111:16 116:21 118:3 161:19 163:19 170:18 220:15 221:11 224:11 265:11
paramedic 49:12 50:23 53:15 105:7,10,18 106:9 196:13 215:14 216:5 284:9 297:17 298:9
paranoid 303:20 309:6
park 302:11
part 10:6,7 11:3 15:13 16:8 17:5 22:22 23:8 38:15,18 53:2 54:11 56:14 61:17,21 72:23 81:10 103:7 139:24 141:2 143:4 155:15 162:17 171:3 186:6 194:14 203:3 206:24 237:9 251:8 316:16, 19 317:18 318:6
part-time 146:13 194:14 196:13 206:16
parties 5:25 168:13
parts 22:23 220:20
party 5:5 220:12
passes 185:10
past 7:16,24 8:16 31:2,3,7, 13 79:1 80:11 109:16,17 120:16 122:12 129:6 152:13,14 156:17,19 158:22,24 204:11
path 202:8
Pathogens 288:25
pattern 221:9 251:13 252:3 310:13,16 311:4,12,16 313:10,11,13
patterns 310:7,11 311:2,10
pause 187:6
pay 24:8,15 25:2,15 76:14 180:17
paycheck 227:22 228:10, 19 298:13
pays 125:13
pedal 293:10
peep 116:9
peers 200:14,15
penalty 96:14
pencil-whipping 281:2,9 300:23
pending 166:22
people 32:3 35:5,7,10,23 36:5 51:2,9 65:25 91:25 94:3 120:7 121:3,4,12 122:11,23 138:19 140:4 143:2 163:9 176:23 177:1,5, 8,10 181:22,25 182:11 190:19 192:25 222:12,13 223:2 234:4 245:25 250:25 268:23 269:3 278:19 285:19,20 287:16,22,23 290:12 295:2,5 298:2 302:12 304:13 309:12,13 311:19 312:6,13,16 313:1 314:17 319:15
people's 312:11
perceive 181:16,18
perceived 200:17
percent 204:25 205:1 206:3,5,8,9 221:25 248:18, 19 290:6
percentages 205:2
perception 201:3
perceptions 200:4,5,7
Perez 7:20
perfect 206:22
perform 90:14,24 122:9 211:4 282:7
performance 27:5 46:5,25 63:14 90:21 91:19 96:20 122:6 137:20 151:10 174:24 176:22 187:18 282:2
peril 179:13
period 129:8 219:22 237:17 248:10 314:18
persisted 112:7 301:2
person 51:5 53:5,9 68:20 132:12 149:23 150:8 185:13,16 187:20 197:7,20 214:1,20 255:6 258:19,21 312:8
person's 52:20,25 299:4
personal 14:18,19 103:1,9 114:4,7 118:13 127:13 163:16 164:10 169:19,25 170:20 171:4 187:15 236:8 244:16 290:21 292:19 296:8,10 299:17,19 302:3,7
personalities 201:2
personality 35:4,12,24 201:25
personally 32:4,16 124:6 157:12 225:7 250:24

254:14,23 255:7 256:25 258:20
personnel 20:7,11,12 23:15,17,22 33:16,18 35:16 45:7 60:12 63:12 125:13 126:17 131:4 132:11 147:23 148:16 186:13,14,25 188:12 189:3,5 204:21 240:19 246:21 248:5,6,11,24 249:1, 14 253:24 260:24 296:14
persons 274:2
pertain 276:6
phone 276:18 310:23 311:5,9
phonetic 94:7 219:12 302:11
photo 92:15 128:9,16,17 269:11
photograph 92:8,9,12 94:15,16 268:2,4,14 295:4
phrases 43:9
picked 45:2 143:15 294:11
picks 312:5
picture 94:1 295:18,19,20 299:7,8,10
pictures 93:23 128:7 287:4 290:21 295:1 299:2,3,12 303:22 309:8,24 311:19
piece 265:4
pile 87:10 90:25 91:15 134:24
piling 91:4 129:12 131:9
pinpoint 9:10 243:22
PIP 14:13,16 15:12,13
PJP 14:13
place 76:24 92:1 122:10 139:17 162:21 163:9 190:24 191:4 193:17 241:2 251:3 252:9 302:12
plain 80:19
plan 14:18,20,21 263:2
planning 25:23 289:1
plans 262:1 300:2,3
platoon 76:7,9
play 36:2 65:9
played 127:14
Plenty 300:3
point 9:14,19 76:14 82:14, 21 89:14 144:13 150:17 151:1 185:22 201:9 262:2, 16 263:22 308:25
pointed 89:10
pointing 98:21
points 77:1,3 284:18
police 144:6
policies 8:10 9:3 18:11,14, 20 19:18 20:6,8 24:10 28:22 29:5 30:14 40:17 41:4,8 43:3,10 44:7 79:10 80:3,5 81:2 103:7,8 118:9,10 120:1 129:13 138:2,17 147:1,24, 25 148:12 149:22 150:4,5,6, 19 151:8,9 155:10 156:15, 17,20 157:7,13,19,22 158:4, 11 159:2,11,16 160:15 176:25 180:7,11 182:14 183:24 184:5 198:16 199:1, 7,21 201:3 202:2,9 225:10 240:15,16 246:15 253:2,18, 21 254:10 255:7 259:21 260:6,7 284:17 296:1,3 305:4 309:22
policy 18:3,9,10,14,15,16, 17,18 19:10,11,22,23 20:1, 4,10,17,22 28:24 30:17 32:6 39:5,14,15,20 40:3,15 41:3, 13,19,23,25 42:4,5,7,8,12, 16,20,23 43:1,5,8,16 44:4 45:19,22 47:13,17,21 48:23 49:6 50:21 51:10 52:1,7 55:8 63:2,3,10,15 64:19,24 65:21 66:6,22,25 75:2,4,7, 18,20 77:3,12,25 78:6,9 86:10 89:20 91:24 92:5 95:23 102:14 103:1 109:15, 19,20 117:13,23 121:18,22 125:16 128:9,15,20,25 138:7,15,21 139:1,3,4 142:4 147:11,23 148:3,4,19 149:19 150:1,11,12,13,17 151:14 152:3 153:6,9,14,25 154:1,3,7,13,15,16,20,23 155:15,21,23 156:7 157:17 158:2 160:12,20,21 161:8, 17,19,21 162:7,9,11 164:19 165:1 166:17 167:25 169:12 176:16,17,20,21 177:6,17, 19 178:10 179:20,21,24 180:4,6 181:8 182:10,17 183:11 184:8 188:5 191:1, 24 193:8 198:24 199:11 207:18 223:13 226:2,3 240:11 246:19 247:2 254:6, 24 255:13 258:21 260:10,11 263:19 264:4 267:16 268:20 270:20 271:3 273:17 278:13 285:10 288:4,5 291:9 292:10,19 296:15 307:3,7, 10 308:24 310:9
political 279:2
poor 223:21,23,24 224:3
portion 144:25 160:6
pose 223:13
poses 224:15
position 7:15 8:20 12:12 13:7 14:2 118:19 145:24 146:14 160:2 162:9 163:9 164:24 165:19,23 169:9,10, 14 180:22 181:5 199:13 217:23 227:21,23 228:9 248:1 305:20,23 307:16 309:16,17,18,23
positions 168:13 216:3 245:20
positive 195:17 205:20 220:1,5,8
possibility 151:4
possibly 24:19,20 183:17
post-hearing 319:8
post-trial 319:3
posting 299:3
potential 131:19 150:15 181:21
Potentially 230:23
Powers 3:16,23 16:6 19:17 21:4 32:1,9,18 36:14,16 51:12 54:17 56:5,9,13 74:5, 22 78:3,16 92:22,25 93:19, 21,24 104:5 110:23 111:4 119:11,14 125:10 128:8 141:4 145:8,9,16,18 146:1 174:21 189:14 205:12,24 206:9 211:19,22 219:10 243:17 251:25 252:9,19 267:23 268:10,18 295:20 296:17
PPE 16:18 103:9 118:14 210:4,5,21 220:19 249:19 271:2 292:21
practical 273:20
practice 31:3,7 87:10
practices 24:11 31:13 118:8,10 152:14 182:16,18
pre 42:1
pre-disciplinary 6:22 7:8 8:2,4 18:25 19:13,20 20:24 21:3 22:11,17 24:1,5,13,16 27:3 31:21 32:15 34:19 36:23 37:9,14 42:2 55:23 56:1,4 57:14,15,19,24 58:19,23 86:8 96:16,19 98:16 100:14 111:23,25 112:20,23 113:6,20 128:1 132:7 134:17 135:20 136:16 137:17 139:25 149:16 150:22 152:18 153:2,19 156:9 157:5 158:4 159:6 160:4,15 173:15 174:6,10, 16 175:1,6 176:8 180:23,24 181:6 216:8,17 219:17 220:6 231:18 272:17 273:12 301:14,22 303:13 309:20 313:23 316:4
pre-discipline 288:23
Pre-incident 289:1
preappellate 32:21
precautions 294:17
preceding 243:5
Precisely 170:22
predetermination 10:5 159:19 160:7 172:2,5,6,13 174:12,13 175:11 180:15
preference 144:22
pregnancy 274:23 300:16 304:9
pregnant 274:23,25
prehearing 11:3,6 173:1 316:3
prejudicial 7:12 9:8,20 79:18
preliminary 5:18
prelitigation 171:11 174:8
prepared 102:6 136:9
prescheduling 316:1
presence 223:22,23,25
present 223:12
presented 5:22 11:12 111:18 183:2 223:4 263:17 300:11
preserve 218:18
preserving 218:23,24
presume 88:7 214:19 251:4 268:17 303:17
presumed 114:2
presuming 113:25
pretrial 316:25
pretty 177:7 196:16 198:15, 19 203:15 248:21 274:24 295:19 312:4
previous 26:20 27:5 113:21 117:1,19 137:20 146:6 156:3 174:23 189:4 217:17 225:7 226:9 250:18 252:22 271:1 301:5 309:2
previously 57:8 84:17 211:23
price 3:20 16:6 28:5,6 187:9 194:5,7 204:25 209:5 217:19 227:3 301:16
primary 163:22
principles 305:4
printed 298:21
prior 28:16 56:20 57:9 59:19 146:7,10 172:13 177:2 181:5 190:24 191:3 199:6 251:23 270:14,17 274:25 287:5 291:11 308:24 310:19
privilege 21:22
privileged 21:18
privy 243:11 246:7
problem 70:3 75:3,4,15 190:8 198:13 203:2,3,5 207:5,6,24 208:1,2 263:17 278:18,25 279:1,3 314:11
problems 226:7,15 237:1, 22 289:21
procedure 125:24 240:23 255:13 274:1 320:24
procedures 9:3 18:21 28:22 29:6 30:14 39:20 43:3,10 54:21 55:2,7,16 66:20 79:10 80:3,6 81:2 147:2 157:8,13 160:16

165:21 180:8 181:7 182:14 184:5 198:16 201:4 202:3 225:10 246:15 253:19 254:11 255:8 296:2,3
proceed 5:18 6:16
proceeded 295:16
proceeding 9:7 117:21 126:6 249:25 319:7
proceedings 23:8
process 6:1,25 39:11,16,21 40:5,18 41:5 55:21 58:17 116:14,16 123:20 126:3,10, 24 127:7 137:4 162:5,17 167:8,16,20,22 168:3,22 171:15 178:21,22 179:18,21 180:2,7,11,23,25 193:21 197:18 198:5 201:16 205:14 222:5 247:7 316:3 321:6
processes 160:7 162:21
professional 49:8 50:2,8 217:13 223:21,23,24 224:3, 21,24 230:15 237:6
professionalism 245:21, 23
professionally 265:22
program 46:6 199:5,7 216:12,13 240:4 245:14,17 253:20
progressive 9:25 39:6,9 161:10,23 162:2 179:25
project 299:11,16
projects 290:21 298:16,19
promise 116:8
promises 59:8
promoted 194:16,17
proof 6:3,4
proper 9:8 16:18,20 30:18 31:23 34:25 35:3 51:13 86:3,14,15 88:4,9,10,13,18, 19 89:1,2,7,11,12,15 91:21 92:25 114:7 118:13 122:9, 10 152:7 220:19 235:2 236:7 249:19 263:18 264:18 273:25 274:2 277:12 291:21 292:8,14,16,25 317:13
properly 94:24 95:2,3 133:22 274:7 276:9 291:12 294:17 317:10
property 293:24
propose 319:6
propriety 316:6
prospectively 124:14
protect 48:3 137:4 299:14 303:8
protecting 302:24
protection 236:8
protective 16:21 103:1,9 114:7 118:13 122:10 292:20 293:1
protocol 62:9
prove 200:2 304:10 316:8
provide 23:6,21 39:11,21 40:4,17 41:5 105:24 162:5 178:22 180:1
provided 42:13 47:20 57:9 59:17 105:23 196:16 219:11 317:16,22
provisions 17:22
PSTRAX 139:18 220:22 240:4 251:5 289:16
public 12:21 43:22 95:22 109:13 114:5 123:16 124:3, 5,7,8 212:10 213:8 294:13 302:4,7,17
pull 142:23 229:21
pulled 128:13 196:18 209:19,20,24 303:4
pulling 296:11
pullover 277:17,24 278:3,5, 11 291:17
pump 265:6 306:11
punishment 28:12 101:19 151:4
punitive 58:2,3,9 177:15
purpose 203:10
pursue 226:23
push 224:9,19 293:11
pushback 220:17,25
pushing 293:12
put 5:5 6:2 15:3 72:9 73:4 76:13,24 96:2,15 97:12,16, 19,21 103:3,16 104:2,17 114:10 116:1 121:15 122:21,23 123:16 124:3,5,7, 8 129:24 136:7 137:16 139:24 141:21 146:4 152:25 166:7 186:11 204:7,9 216:11 218:16 219:8,25 220:11 223:6 225:1 228:23 229:13 230:1 232:21 233:18 245:22 262:11,13,20 275:11,13 276:17,21 277:21 278:7 281:16 284:1 293:2, 16 294:2 295:9 299:23 304:9 308:13,22 314:24
puts 122:23 279:8 320:14
putting 70:3 118:7 136:19 175:6 203:6 229:17 281:7,9 296:7 299:13

Q

qualifications 164:4
qualified 261:1
quarantined 290:14
quarters 93:6 206:5
question 10:9,10 25:21,22 26:11 29:22 30:5 40:1,10,24 42:24 48:21 50:6 51:15 52:7 61:23 68:16 77:10 80:25 81:7,10 82:2 89:9 90:1,23 94:23 98:13 123:7,10 130:15 133:2,11,12 135:3 137:13 138:3,11 148:14 152:24 157:9,23 158:13 166:21,22 168:2 169:5 175:11,13,14,23 176:9,13 181:10 184:3 186:21 189:1, 6,8 190:1 192:1,9,18 193:25 197:24 198:7,14 202:11,16 214:14 218:1 227:1 231:6 235:14 249:9 254:1,15,25 255:11 259:3,23 310:12 316:6 318:18
questioned 129:7 223:1 284:16
questioning 59:20 69:24 79:14
questions 59:10,11 69:19 70:23 73:8 79:12 80:21 102:7 124:18 134:6 147:8 157:17 158:5 159:6,7,19 160:6,8 189:17 208:23 211:15,20 223:13 238:1 244:1 270:11 271:18 273:1 284:15 306:21
quick 154:11 235:5 239:17 315:18
quickly 69:24 236:8 318:3 321:15
quote 33:6 49:6,22,24

R

radio 306:5
raised 6:21 7:7 219:16 232:20 244:19 267:8
raising 224:17
ran 200:24
Ranch 220:13
Randall 5:7
range 302:21,22,23 303:1, 10
rank 63:24 64:6 71:3 145:23
ranks 73:15 144:5 181:22
rash 100:16
rational 8:22 55:12,18 60:25 148:25 149:4,5,7
Ray 94:7
re-call 211:19
re-called 211:23
reach 51:11
read 18:3,5,7,11,14 25:19, 20 41:1,2 43:12 62:20 63:2 90:6 101:6 103:2,4 105:11 106:13,17,20,21,24,25 131:15 140:1 161:24 164:7, 19 166:21,22 178:11 199:10 217:3 230:20 249:20 253:22 254:6 260:17 306:7
reading 217:7 259:24
reads 90:18 149:2
ready 108:8 227:25 228:3 239:25 307:24
real 146:22 265:20
realize 193:14
realizes 193:13
reason 51:4 74:25 77:24 80:19 154:9 158:21 163:11 282:23 289:8
reasonable 39:12 40:5 56:25 68:3 162:6 180:2
reasons 75:1 76:20 122:18 135:13 180:18
rebellious 225:10
rebut 5:22
rebutted 267:4
recall 16:16 33:8 37:3 39:1 71:23 74:11,14 80:13,16 81:13,19 82:8 83:24 108:20 109:4 143:18 186:14,16,17, 19,21 187:8,11 195:2 197:2, 9,10,15 198:25 200:9 202:22,25 207:19 209:13 210:23,24 211:3,6,12 219:22 220:10 236:9 248:11 252:11 253:17 256:3 258:25 259:10 266:24 268:7 269:9 292:11 293:4
receipt 44:15 212:14 214:24 215:5
receive 17:9 198:23 202:12 253:18
received 14:3,8 18:9 29:11, 24 77:4 240:25 246:20,23 251:19 253:23 254:3,20 279:18 304:22
receiving 272:19
recent 16:3 245:13
recently 216:15 217:3,4 231:20
recess 70:12 124:23 145:4 242:4 271:23
recesses 186:18
recline 106:1 232:1
recliner 236:4 241:8,11
recliners 106:1 231:22,23
recognize 92:9,15,18 94:2
recollect 16:22
recommendation 33:2
reconsider 10:15
record 5:6,10,11 6:3,12 8:15 17:5,8 28:19 41:2 45:3 57:5,7 60:12 70:14 120:21 124:25 128:22 145:6 149:24 166:10 176:4 181:2,4 215:22 273:9 316:8 317:4 318:21 319:23

recorded 57:8,18,21 310:23 311:5 313:23 314:2 320:1
recording 57:12 309:25 320:2,9
records 47:3,8
recourse 198:12
recruit 250:10
recurring 139:17 251:3
redirect 3:11,15,18,24 4:3, 6,10,13 80:23 134:9,10 189:17,18 212:1 238:2 246:5 256:10 271:9
reeling 212:18
refer 89:16 97:15 99:15 153:22 162:11 182:4 213:10
reference 20:18 39:8 40:15 41:2 86:8,12 101:12 102:9, 12 103:19 113:15 117:3,7, 14 118:24 130:11 134:16 135:8 137:23,24 150:17 152:22,25 153:25 154:11 155:10,20 156:7,20 158:11 160:11 219:24 292:23 318:9
referenced 102:11 120:24 156:15,17 240:12
references 39:14 89:6 168:25 274:3 282:13
referencing 112:22 116:25 118:25
referred 64:7 120:3
referring 112:16 117:9,18 118:11,21 152:8,17 153:11, 13 166:4,5 217:18 224:5 259:22 260:8,22 271:11
refers 31:4 162:11 274:9
reflect 217:16
refresh 249:21
Refusal 85:24 277:4
refuse 119:3,8,9 281:14 304:19
refused 267:2 318:22
refuses 304:24
refusing 59:10 122:8 238:6
regard 7:7 19:10 21:15 23:14 27:24 36:2 43:10 45:19 48:7 49:11 53:10,16 55:3 56:2 63:19 75:19 77:11 85:14 95:15 96:8,13 101:5,9 103:20 105:3 114:16 138:10 147:20 148:12 154:1,8 158:12 160:10 167:22 171:15,19 172:7,12 176:7, 21 181:8 183:25 186:12 187:7 195:9 196:3,7 197:3 199:24 201:8 218:3 219:6, 13 229:1 232:16,19 240:18 241:1 246:21 249:5,6,7 252:1 253:24 254:3,9 255:5 261:3 263:14 266:21 273:5, 10 279:16 281:19 282:17,18 288:7 289:10 291:16 294:24 302:17 316:3
regular 66:20 79:2
regulate 279:4,5
rehab 303:5
relate 88:12 150:19 318:17
related 59:10 134:16
relates 237:13
relating 137:8
relation 245:1
relationship 79:12 105:18 218:13,19,23,25 284:8,12, 13
relevance 316:14 317:8,13
relevant 7:24 8:17 9:13,14, 24 10:17 79:21,23 316:21
relied 9:11,18 10:12 175:5
rely 10:22 164:3 240:11
remember 14:11 16:3,17 22:6 38:17 113:21 131:14 200:13,14 205:3 207:5,8 249:22 253:17 254:5 277:16 278:1 285:7
remembering 206:4
remind 266:11 292:16
reminded 71:23 72:8 286:6 292:9
reminder 191:6
reminders 283:7
removed 293:18
Renew 40:19
repeat 40:1 152:24 157:9, 23 171:21 176:13 179:22 184:2 196:4 215:3 249:8
repeated 283:7
repeatedly 117:12,22 129:24
repercussions 204:17
rephrase 39:25 169:15 255:9
replace 118:19 305:20,22
replaced 228:6
replacement 286:12 289:20
replacing 275:23
replied 222:13
reply 82:20 204:9
report 75:20,22 78:1 223:7 273:21 285:25
reported 119:13 280:24
reporter 6:10 12:9 144:24 145:15 242:12 247:21 319:24
reporting 47:17 86:10 273:18,23 281:12 291:10
represent 145:22 166:16
representative 58:13,16, 21 64:7 163:2
representatives 166:12
representing 291:12
reprimand 13:17 14:3,5 15:9 87:15,16 96:4 99:16,17 130:20 174:1,19 177:16,18 178:7,9,13 191:7 192:13 211:4 213:11 253:3,4 259:1 260:19 261:2,9 263:25 264:13,16 266:20,24 277:7
reprimands 252:23
reputation 79:15
request 68:20 69:10 82:21 263:10 289:16
requested 7:9 22:16 68:7 69:21 286:13 289:9 305:24 314:1
requesting 117:11,22
requests 117:15
require 119:18 154:15 187:14
required 7:1 24:6 26:25 44:4 55:11,17 57:2 60:24 92:2 118:17 148:24 163:4 181:15 182:3,12 187:9 189:21 190:11 240:5 242:25 273:21 278:12 288:16 305:18
requirement 47:14 94:21 130:21
requirements 19:9 67:8 171:16 213:3
requires 180:23 182:2
requisites 167:25
reserve 10:13 280:9,12,13 293:7,8 314:10,20 315:1
resign 38:21
resignation 38:24
resigned 227:19 228:8,17
resigning 64:21
resisting 267:9
resolve 198:13 207:22,23
resolved 77:20,22,23 196:22 233:1,4 301:6,8
respect 245:19 305:3
respond 6:21 7:1,9 22:12, 16 23:2,7,16,19 26:9,25 27:11,23 39:13 40:6,13 49:7 100:21 102:21 162:7 180:4 291:1 318:2 321:5
responded 76:23 77:13
responding 102:7 209:23
response 68:23 76:22 222:10 276:12 279:23 281:4,21 285:5
responsibilities 119:21 163:20 306:13
responsibility 34:20 77:1 104:8 111:7 114:18,19 115:1,3,14,20,22,25 122:2, 16,24 123:1,12,14,15,21,24 124:8,9,13 163:22 228:1 252:5
responsible 104:14
rest 295:15 315:8 316:17
restate 188:25 259:23
restriction 294:14
rests 163:23
result 41:20 44:17 54:13 58:2,9 99:1,7 119:19 212:15 214:25 215:7 290:15 302:1 317:22
resulted 33:1 118:5 130:19 158:22 225:15 277:6
results 195:17
resupplied 303:2
retire 298:18 300:4
retired 194:18,20 198:17 209:12
retirement 38:12 127:18 257:13 272:15
retrospectively 124:15
return 273:24
returned 76:6
review 19:9,15 20:3,14 21:10 30:19 32:20 34:11 41:25 42:4,7 51:21 129:20 139:12 160:15,18,25 176:25 190:25 198:24 199:2,9 216:6 250:13,20
reviewed 8:5 9:10 19:16,18 20:1,21,23 34:9 42:5 139:23 142:11 160:19,20 205:16 216:14
reviewing 111:16 142:15 300:10
reviews 195:20
revoked 38:22,25 39:2
revolved 191:11
rewards 59:8
Rich 227:3 306:8
Richard 5:3
rid 204:1 243:12 245:8
right-hand 148:5 163:16
rights 39:11,16,21 40:5,18 41:5 137:5 162:5 167:22 168:22 178:21 179:12 180:2 222:14
Riley 4:8 247:14,22 303:23 306:8 309:7 310:5,7,18,20, 22,24 311:9,11
Riley's 276:1 311:9
ring 211:12
rise 122:9 155:24

rises 132:4
risk 122:11,21,23 123:17,23 124:3,5,7,9 292:21
road 214:10
role 78:21
room 262:15,17,23 269:1 278:18,23 290:1,15 292:1,3
rotation 207:4
rough 116:3
Roughly 233:12
round 261:23
roundabout 202:16
rounds 253:13
route 209:19,22
routine 141:6,8
routinely 80:5 81:1 224:18 298:2
rule 10:16 63:15 65:12,14 311:12,14,16 313:3
rules 10:2,7 132:23 312:24 313:12,18
rumors 142:5,17,18
run 315:17
running 200:23
rush 144:10

S

S-A-Y-R-E 247:22
S-C-H-V-A-N-E-V-E-L-D-T 272:9
S-H-A-F-T-O 215:23
S-T-O-N-E 12:11
safe 126:19 210:19
safety 114:5 118:8,10 119:5 123:23 210:18 288:25 302:4,7,18 304:17,21
sanction 202:13
SARS 294:20
sat 16:4,8 17:2 103:11 147:4 297:14
satisfied 63:22 114:15
Saturday 275:2
Saturday-sunday 287:7
saved 114:17,21 115:4,8 116:12
Sayre 4:8 94:7,12 139:8 140:8 233:16 247:13,14,22 255:22 261:15 273:3 314:15
Scanning 299:12
scared 218:16,17
scene 210:2,17,21
schedule 269:16 287:3,4
scheduled 286:21,22 287:10,17,18
school 146:5 233:16
Schvaneveldt 4:15 5:8,9 6:20 15:22,25 16:5 17:4 19:2 23:7 26:6,12,24 31:7 32:7,14 34:24 37:10 38:20 41:16 45:20 48:7 53:17 57:12 74:9 77:5 78:24 79:8 91:24 101:15 105:19 107:3 112:4,15,18 113:23 114:18 119:9 126:2,6,11 130:5,6,25 131:22 134:3 137:6 138:22 139:2 140:16 141:13 142:9 151:3 153:3 154:10,15 155:22 158:3,25 159:4,11 162:13 164:17 165:2,6,11, 22 171:20 172:3 173:20 174:1 186:13 187:10 188:17 194:23 195:9 196:3,8 197:1 201:7,13 203:24 204:1,21, 25 208:4 216:9,18 217:24 219:6,13 220:17 221:13 223:15 224:22 225:8 226:8 227:7 229:6,9 230:13,22 232:19 233:21 236:18 240:2,7,22 241:3 242:18 248:2,6 249:7 255:23 257:5 258:13 259:7,16 262:18,20 265:23 270:14 271:24 272:1,8 315:4
Schvaneveldt's 6:15 33:3, 9,15 45:14 126:25 128:25 129:17 131:4 138:6,14 155:11 173:2 186:14 188:11 218:3 231:17 315:13 316:16
score 205:1,5,6,7,8 206:2,6, 8 248:18,19
scores 205:11
scoring 206:5
SDMF 117:13 121:24 122:12,18
season 12:1 179:6
section 62:9,17 165:1 169:11 179:19 205:1,8 214:5
seeks 24:7
sees 168:19
seldom 191:7
selectively 139:1 143:8
self-accountability 221:16
self-evaluations 205:4
self-justification 221:18, 24
send 27:18 28:18 78:2 171:12 199:5 205:18,25
sending 28:16 160:14 199:7 281:23
sense 14:14 84:24 85:21 121:11 140:15 168:14 186:16,17 225:15,25 226:5 305:12
sentence 164:7,20 169:17 171:3
separate 47:7 223:9 292:15
separately 26:2 98:19 100:25 196:19 316:13
September 219:19 234:17, 19,21,24 235:2,9,12 286:6, 13,15,17,21 288:24 292:14 297:3,20
sequestered 290:5,14
sequestering 278:19
seriousness 31:1 64:8 152:13 154:19
seriousnesses 154:22
serve 122:11
service 5:14 12:22 14:9 38:4,7,10 42:13 47:20 54:8 75:9 112:8 142:16 146:2,3,4 194:20 215:25 257:3 295:10 301:3 314:24
Servpro 93:12 269:6,19 270:1 296:5
set 165:21 181:7 273:6 303:8 320:10
setting 149:19 305:1 310:20
Shafto 4:1 49:12 50:22,23 53:15 105:7,10,16,18 106:9 116:4 121:8 215:15,16,23 216:25 234:16 238:1 280:25 283:3,25 284:9 289:13 294:6 297:8,11,17 314:15
Shafto's 298:9
shift 72:3,5 77:15 118:15 218:21 227:25 271:13 277:16 287:10 289:5,6,14 294:18 297:7 307:13,23
shift's 287:3
shifts 78:22 253:8,10,15 287:5,9,17,22
shirt 277:19 307:15
shopping 222:9 285:3,13
short 124:20 146:22 150:13 153:4 242:1
shortly 76:18
shorts 291:20,25 292:5,6 307:14,17
show 36:8 94:15 106:6 150:13,18 151:7 152:5 155:15 183:23 184:4 221:15 232:13
showed 61:5 309:19
showing 199:10 228:18 300:24
shown 128:7 311:18
shows 27:6 28:13 105:15 151:9,12 225:8 295:5
sic 173:1 280:23 283:6 321:9,13
sick 74:8 75:11,13,19 76:14, 17,19,25 77:24 174:22
273:23 274:1,2,5,7 275:1,5, 7,14,17,19 276:2,4,7,9,15, 17,21,24 300:17,18 304:8 308:3,4,8,9,16,20 310:8,15, 17,19,25 311:14,15 313:7
sickness 274:24
side 6:17 94:2 167:19 196:21 197:21 198:1 210:7 273:15
sign 187:10,16 199:9 205:23
signed 104:9 186:25 204:22 300:8
significant 33:2,9,15 225:6
significantly 312:4
signing 186:14
silly 8:7
similar 31:4,8,14 152:15 156:8 217:20 230:4 236:23
simple 280:20
simpler 255:9
simply 9:14 61:15 76:8 122:15 168:20 172:24 176:6 193:10
single 9:10,11 65:11 129:12 136:2 154:15 166:20 265:4
singled 309:11
sir 13:14,21 14:1 15:15,17 19:5 20:12 42:6 64:23 74:10,16 75:14,17 77:21 78:4,10,17,23 79:1 80:9 81:8,18 83:19 96:11 102:4 104:10 111:9,24 112:2 137:24 244:5,11 245:9
sit 276:25
sit-down 139:9 250:11
sites 299:4
sitting 249:25 295:11 297:12
situated 293:10
situation 8:13 9:25 72:1 74:14 82:8 86:1 93:24 133:20 155:1 162:10 181:14 193:16 194:22 197:8 203:22 207:12 208:8,12 223:4,12 224:11 236:9 246:25 261:5, 10 277:6 284:25 287:20 292:11 293:4 295:7
situations 190:18
size 68:24 279:12,14,24,25 293:9
sleep 38:1 106:3,7 109:14, 16 110:6 207:6,9,18 232:5, 14 291:25 297:23 298:7
sleeping 29:11 30:2,3,7,9 104:25 131:5 139:19 207:5, 10 231:18 235:25 251:5 275:4 283:4 290:16 296:24 298:5 301:11,12,13

slept 275:1
small 176:18 207:13,14 260:18 319:10
smart 225:20,23 226:5 284:15
smartest 225:17
smell 294:10
Smith's 222:9 224:16 285:3,13,15,20
snap 295:19
snapped 295:17
snoring 297:10
solidifying 142:15
Solutions 266:4,13 288:25 289:1
solved 191:5
somebody's 166:6 187:15 256:21
someone's 137:4
son 54:5 256:18 265:15,19, 24
sooner 320:11
sort 17:10 25:7 29:2 35:24 72:21 79:14 102:15 106:10 114:19 129:10 168:24 178:19 182:2 189:22 212:18 247:2 288:7 298:14 309:25 315:8
sounds 22:3 73:12 122:22
source 44:16 212:14 214:24 215:6
sources 43:22 147:23 174:7 212:4,9
South 5:13,15,20 6:6 7:20 10:2 13:2,4,5 45:2 146:7,9, 13 147:2 182:14 216:1 225:17 246:10
speak 5:24 144:4 270:8 289:12 292:17 316:13
speaking 129:20 148:15
special 312:24,25 313:3
specially 254:5
specific 8:3 97:12 111:13 127:16 132:23 135:25 136:25 149:20 217:9 228:20 251:15 275:24 302:9 307:2
specifically 8:10 23:16 27:13 86:2,13 88:3,8 90:8, 13 97:24 104:25 107:12 109:10 119:16 173:12 192:4 198:25 220:10 243:9 260:9, 19 261:2 264:16 274:3 282:6 283:20 289:5 292:12, 18 294:16 305:10 306:4 307:4 318:20
specifics 112:11,12 200:8, 9,13 288:19
speculate 64:14
speculation 188:19
spell 5:10 12:9 145:14 215:21 242:12 247:20 258:4 272:7
spelled 117:4 258:5
spelling 145:16
Spencer 119:17
spend 37:8
spending 291:23
spent 37:21,22 278:24 284:22 290:6
spoke 32:1 54:17 244:9
spoken 221:8
spot 71:15
square 193:2
squarely 21:23
staff 33:7 35:22 125:6 141:11 181:20 193:7,18 202:23 203:12 243:12 314:5
staffing 76:9,12 77:14
stand 84:11
standard 6:9 110:8 151:20, 23,24 152:1,9,10 182:13 223:13 310:21
standards 221:17 226:24
standing 128:11
stands 226:16
start 69:18 127:4 184:7 210:3 237:4 239:23 247:7 251:17 261:24 263:1 291:11 302:24 303:9 309:15
started 10:19 146:4,17,18, 19 194:13 208:24 216:1,5 233:10 299:11 309:7 314:6
starting 206:16
starts 221:12 312:3
state 7:18 8:16 17:23 24:6 40:22 42:17,21 63:11,16 95:22 146:11 213:18 215:21 242:11 275:16 294:13 306:9
stated 9:24 32:24 49:16,21 76:4 119:23 121:6 198:9 201:25 237:10 244:23 246:24 274:4 303:13,14
statement 33:4,10 63:2 121:1
statements 74:4 121:3 174:20
states 47:21 121:23 148:19 151:11 273:25
statewide 294:14
stating 128:23 293:3
station 66:1 72:3 93:13,15 95:4 105:24 107:24 195:5,6 196:18,19 200:4,23,24 201:1,10,11,22 208:16,19 222:24 231:25 236:23 260:24 262:10,15 268:7,14, 16 269:8,22 270:1 277:19, 23,25 278:6,11,12 292:7 293:15 295:1,2,8 296:9,16 298:6 307:1,8,11 314:12
stations 92:17 108:5,6 268:6 269:18 277:23 289:6 296:5,15
status 286:16
stay 132:12 276:14
stayed 146:5 286:24 303:2
staying 109:11 297:1
steer 210:11
steering 210:8 277:20 278:1 291:18
step 271:21
stepping 145:25
steps 193:15 227:8,10
Steve 3:9 73:17,22
Stewart 16:8 21:5,7,8,9 36:20 72:16,17 73:5 76:7, 15,16 118:22,25 119:10,13 125:8 141:4 251:25 252:10, 20 261:20 276:15 279:20 284:3 286:14,25 288:24 290:25 302:22 304:14 306:15 308:8,14
stick 111:12 112:9 257:11
stipulate 11:10
stipulated 11:7
Stone 3:4,12 5:15 11:21 12:3,8,11 70:9,23 84:12,16 125:4 143:24 144:18 147:12 300:8 302:2 303:11 304:18
Stone's 147:4 186:3,6
Stop 188:24
stopped 209:24 288:14
stops 18:19 312:4
stored 299:15
story 167:19 196:21 197:22 198:2 273:15
straight 144:8
street 302:10
strengths 201:1
stress 262:3
stretch 304:7
stretching 304:15
strike 171:3
strong 203:15 242:24 246:13
struggling 116:7
stuck 19:2
stuff 27:7 115:23 141:1 202:14 284:18 300:25
sub-allegations 25:9
subcategories 91:3
subject 55:3 59:12
subjected 58:1,8 59:7,25
submit 205:16
subordinate 189:24 204:8
subsection 89:14
subsequent 57:10 253:15
subsequently 275:11
substantial 6:5
succeed 233:23 234:2,8 251:16
successful 122:13,15
succession 33:1
suffer 96:14
suffering 68:2 122:7
sufficient 157:16
sufficiently 165:17
suggested 122:2
sum 33:1
summary 61:6
Sunday-monday 287:7
superior 245:16 281:18
supervise 78:22 79:4 80:8 190:19 248:14 254:4
supervised 80:17 82:13 195:7 197:7 270:17
supervises 138:19
supervising 51:19 52:12 53:6 182:8 186:1 196:1 236:22 237:19 254:9,23 255:6 258:20
supervision 125:4
supervisor 15:22 43:25 44:5,25 46:3 47:23 48:2,12, 16 49:3,6 50:19,21,22 51:3, 7,9,18,21,22 52:3,4,11,15, 18 53:3,4,8,11,13 63:23 64:3,6 125:22 138:8 141:20 162:19,21,23 163:5,7,20,24 164:4,8,12 165:18 166:5 167:23 168:18 169:3,10,17, 21,25 170:2,14 171:2,4,6 173:3 181:15 183:14,16,17, 25 184:6 185:10,12,18,19, 20,21,24 188:9 189:21,22, 24 190:12,14 191:17 192:11,15 193:4 194:23 195:4 199:14 204:7,23 208:7 209:7 212:12,22 213:15,17,19,21 214:17,21, 23 215:4,8 217:24 242:18 243:1,3,4 246:24 248:2 254:8 258:16 273:5
supervisor's 52:22 214:7
supervisors 39:5 44:14,23 46:16 48:8,14 49:2 62:16 112:9 117:11,14 121:6 135:17 137:1 138:16,19,21 140:4 141:15 161:9,22 164:16,23 165:12 170:8 188:5 190:12,19 193:18

199:15 212:12 301:4
supply 302:25
support 150:6 318:10
supported 149:21 318:12
suppose 52:11 282:4
supposed 44:11 93:16 97:25 101:22 108:17 133:14 166:11 171:6
suppression 289:2
surprises 304:5
survive 302:14
suspect 182:2
suspension 15:14 87:16, 17,25 96:5,6 99:18 110:13 131:20 132:8 177:24 178:7, 16 211:4
suspensions 117:5,8
sustain 63:4 168:6 179:9
Sustained 182:23 234:12
swear 84:13
switch 239:22
swollen 12:2
sworn 11:23 12:4 70:18 73:18 84:18 145:10 163:9 164:24 194:8 211:24 215:17 242:7 247:15 257:23 272:2
synopsis 61:6 260:13
system 31:19 46:5,12,19,21 47:8,13 48:7 65:1 72:10 127:18 203:8 281:13,24 283:17 300:19,20,21 304:12
systems 289:2

T

table 150:18 186:12 295:12
takes 42:12
taking 7:15 122:24 123:1,15 124:8 139:17 149:18 190:24 191:4 202:19 218:25 219:3 251:3 285:11 288:9 303:21 309:8,24
talk 15:5 21:13 22:4 36:13, 16,22 37:1 63:18 91:20 143:25 154:2 167:14 179:15,16 187:3 200:3 203:21,25 214:18 226:4 232:22,23 251:24 271:21 275:22 277:1 290:10 295:3, 17 296:17 304:10 306:5 313:16,17 314:11 316:11 317:6
talked 36:19 76:16 139:16 147:12 195:12 196:20 221:12 223:25 249:24 251:2 252:3 257:8 273:2 284:25 291:15 294:21 295:13 297:1 302:5 310:5,22,24
talking 17:1 83:25 113:12 114:1,5 129:9 152:5 153:17, 18 159:1 167:12 181:23 191:19 195:13,18 196:6 222:6,22 223:23 224:6 225:11 226:10,19 227:2,22 250:17 262:8 271:15 278:2 279:1,2 285:9,12 293:16
talks 180:1 203:17 251:22
tally 238:10,16
tape 111:22
target 201:7 266:4,13 288:25 289:1 311:17,19,21, 24
targeted 304:3,4 309:12
targeting 203:16
tasks 220:18
taught 305:2
Taylorsville 7:21,22
technically 163:1
television 297:16
telling 69:13 151:19 302:13
template 105:14
ten 22:8 26:20 27:15,23,24 28:15 37:5 81:14 108:21 109:7 159:5,15 230:11 261:10,12 299:20
ten-minute 70:11
ten-second 276:18
tend 319:13,14
term 129:11
termin 99:9
terminate 127:4 309:21
terminated 17:4 34:13 99:9,12 272:11
terminating 122:19
termination 15:18 17:1 24:8,15 25:2,15 32:25 36:24 38:21 58:3 79:20 99:1,4,7 110:17 127:8 154:24 180:17 300:6,7 304:3,5
terms 15:6 131:16 255:9
test 224:9
testified 12:5 70:19 73:19 84:18 145:11 189:4 192:3 194:9 211:24 215:18 242:8 247:16 257:24 272:3
testify 9:9
testifying 123:5
testimony 123:4 127:25 132:25 178:8 182:22 186:4 192:6 212:19 317:19 318:9, 13,21
testing 234:18 286:15 287:10,25 288:10,16 289:10
text 68:11,13 76:18 77:2,5 279:15 286:25 289:16 304:13 308:18 318:6
texts 281:23
themes 139:17 251:3
thickest 33:19
thickness 33:24 34:4
thin 139:21 140:10 251:10 252:17 257:10 303:23
thing 9:10,11,15 70:6 71:12 72:24 86:12,16,17 87:8 88:16,20,23 89:4,22,25 90:15,16 100:21 114:25 148:8 157:10 175:18 205:25 281:10 282:9 285:16 299:17 302:1 303:11 304:8 309:20 310:3
things 56:18 61:1 85:13 94:15 100:22 115:12 116:3, 6,7 128:4 130:24 131:21 132:9 142:14,15 150:24 153:23 167:17 172:25 177:1 191:5 195:14,15,16 197:16 200:16,21 201:20 202:2,4,7, 8,17 206:21 220:1,5,8 230:5 233:19 239:24 245:18 246:17 251:13 256:15 265:13 277:11 280:19,20 284:15,17 299:19 301:24 304:6,16 309:13 310:3
thinker 242:24
thinking 37:23,24 209:18 284:20 311:6
Thirty-four 242:16
thought 20:13 28:9 50:5 114:23 116:13,15 120:18 123:20 128:2 222:5 223:2 225:20 265:22 276:20 309:5
thoughts 144:20
threatened 208:20 244:22, 24
threatening 59:7
three-minute 124:21
three-quarter 277:18
three-ring 299:14
throat 19:3
throw 9:14
tie 224:8,10 229:14,19
tight 210:11
till 100:17 198:17 209:9 290:2 297:23
time 16:6 24:12 33:17 36:23 37:3,13,14 38:2,15,18 60:17 65:17 72:13,15,23 77:16 80:16 82:1 100:22 106:5 108:15,16 116:7,9 118:23 119:19 122:9 127:11,15,17, 25 129:8 135:12 143:17,25 145:1 146:22 156:11,18,19, 23 157:1 171:10,12 172:18 177:21 186:19 189:22,24 190:2,12,14 192:14 194:15 195:7 196:4 198:17 201:15, 17 202:6 203:9 204:23 206:17,24 207:10 209:10 210:1,4 218:2,7,12 220:16 221:4,25 230:9 232:7,8 233:11,18 236:22 237:18 238:11,21 242:21,25 243:3, 4 246:19,24 249:18 250:23 251:14 253:1 254:7,11,21 255:4 261:17,20 262:5,10, 16,18,21 263:10 270:7 272:13 273:21 274:22,24 276:14,24 278:1,6,20,24 279:7 280:14 286:5,12 290:6 291:23 296:6 303:6 308:9,25 309:2 310:8,10 314:19 321:10
time-wise 144:1
timely 60:21 61:2 90:10,14 277:14 280:7 282:8,12 283:7 313:2
times 60:15 81:11,16,17 82:5 99:24 106:2 108:19 109:22 110:2,6 181:3 197:15 201:19 203:1 220:17,24 232:5 233:19 238:9,11,12,14,16 284:4 286:7 289:15 291:12 301:19
tired 207:12,16
today 5:4,18 20:20 45:2 69:23 105:23 116:17 139:9 147:5 186:4 200:9 202:24 250:1,9,11 319:19 320:1
Todd 5:13
toddler 49:14 53:20 224:23
toddlers 224:13
toes 145:25
told 21:21 66:8 86:4 88:4,9, 12,17 89:8,12,16 91:17,18, 21 119:8,10 140:9 141:2 164:2 175:2,7 183:22 201:21 202:6,20,21 208:9, 17 241:5 252:22 254:7 255:2 262:21 263:20 267:1 273:9,13 277:12,13,20 288:3 291:20 295:18 304:18 305:12 306:16 308:9,14 309:2,7
tones 107:18 220:19
tool 46:24 85:7
top 26:19 74:3 90:25 92:7 115:17 195:2 206:8 225:5 256:13 268:14
Topher 258:8 273:3 274:13 277:17 278:21,23 314:15
topics 285:11
total 12:23 26:5,7,13,15 96:22,25 97:3,6 98:9 205:5
totality 25:16 97:13
tour 278:13 292:7
town 319:20 320:15
track 15:4 46:24 252:6
tracking 46:5
tracks 47:3,8

train 18:15 295:9
trained 255:3
training 18:9,16 105:1,23, 25 106:5,12 107:4,7 176:24 198:23 209:23 220:22 231:19 232:7,9,16,24 236:1, 5 241:8,16 245:14,15,17,18 246:14,17,18,20,23 253:18, 23 254:3,21 266:4,13 286:18 288:17,24 289:10 296:24 297:6,7,10,15,16 306:2 307:9
trainings 289:3
Trakstar 46:12,19,21 47:8, 12 48:7 49:10 54:2 71:14,24 72:10 85:17 100:10 101:6 105:3 117:24,25 120:24 131:4 133:25 134:1,4 139:10,12,14 141:14 149:25 150:3 165:12 166:8 172:24 173:11,13,19,22,24,25 174:3,4,18 175:7 187:17 188:15 195:21 203:7 204:7, 9 216:7,22,23 218:3 219:6 220:25 223:10 224:3 228:23 229:2 230:2,7 233:19 234:16 241:2 250:4,12,14, 18,20,23 252:23 256:3,21 266:19,23 267:3 311:1 312:3
Trakstars 250:3
transcript 319:7,9,22 320:5
transitioned 227:20 228:9
treated 125:19 199:23 287:20
treating 199:15,20
trigger 170:15
trip 286:24
trouble 6:10 96:13 152:23
troublemaker 140:20
truck 114:6 116:6 118:12 206:23 210:11 226:2 228:15 238:14,21,22,23 239:3 260:10 264:21 265:1,2,4,5 280:12 281:9 283:12,16 289:15 299:8 300:23 302:20 303:2,7
true 44:17 63:14 115:13 120:6 123:17 138:10 141:23 156:16 165:17 172:11 184:21,22 207:7 212:15 214:25 215:7 221:24 259:6 266:8,22 284:6,7 317:2
trust 118:16 164:15 165:16 305:14 306:10,16
turn 256:1
turnout 294:1,8
turnouts 266:2 293:1,2,13
Twenty-eight 108:3
Twenty-three 272:12
tying 230:17
type 9:25 116:22 151:4 156:12 170:19,20,21 177:2 180:20 181:16 182:5 191:2 195:8 196:2 224:12,14 237:22 260:18 304:6
types 176:25 183:3
typical 280:11 291:25
typically 76:8 182:8 221:8 261:23 278:17

U

Uh-huh 277:10 284:10 294:22 308:5
ultimate 17:21 147:16 164:8,15 169:18 170:7,8,9, 11,17
ultimately 104:12 105:9 115:11 170:10 174:5 219:18 288:10
UMC 105:24
unable 75:22
unauthorized 104:24 110:11 296:23
unaware 83:15
unbiased 132:12,14,20 133:14,19
uncomfortable 318:13
uncommon 139:13
understand 17:25 18:17,18 23:13 27:21 29:21 38:12 39:15 40:16 41:3,12 42:18 43:17 46:18 51:17 55:13 67:21 68:13,19,24 69:2,5 71:1 73:1 93:14,16 99:25 103:12 134:22 140:2 144:9 145:22 148:9,22,23 149:1,3, 12 151:18 155:9 166:11 167:10 168:7,16 169:8 170:2 171:6 173:6 174:15 176:3,11 177:1,6 179:1,5 190:10 191:9 197:23 203:10 213:13 239:4,5 244:25 247:3,4,5 254:25 255:10,11, 13,17 319:12
understanding 42:25 46:13 67:11 82:22 120:23 137:5 167:7 168:5,8,10 170:3 171:15 190:15 193:3 264:11 296:1 319:1
understands 193:12
understood 83:12 113:23 171:10 189:8 193:10 199:10,11
undertake 47:24
undertaken 138:6,9 176:5
uneasy 222:12
unfair 6:25
unfairly 125:19
unfounded 52:14
uniform 31:23 86:3,14,15 87:14 88:9,10,16,18,20 89:1,2,7,11,12,15,20,22,23 99:14,15,24 139:19 220:19 235:2 236:18 251:6 260:10, 11 264:18 271:2 277:12 278:2,10 281:16 291:10,15, 19,21 292:9,10,15,16 307:1, 2,6,8,12,17,22
uniformly 65:5 66:14
unique 237:2
unjust 6:24 66:3
unprofessional 106:4 232:6
unrelated 131:17 134:13,19 135:2,4 137:2,7
unsuccessful 117:13
untoward 117:7
unusual 208:5
upcoming 21:16
updated 199:8
upheld 7:6
upper 274:11
upstairs 295:10,15
uterus 275:12
utilize 46:24 91:2 137:1
utilized 125:18

V

vacation 286:21 287:17 288:1,9
vacuum 49:24 224:14
vain 45:13
valid 121:14
vary 149:6
vehicle 122:9 235:10,16,20 236:13 265:7 290:24 291:3, 4
venture 204:15
verbal 14:8 15:6 29:11,17 30:7 87:15 99:16 177:4,16 191:7 252:23 301:10
versus 281:13
view 121:24 130:20 131:8, 21 166:6,9 170:14 223:15 248:20
viewed 32:25
violate 6:25 129:13 135:21 136:10,11,12,17 139:1
violated 32:7 65:17 77:25 139:3 150:4,5 154:7 157:13
violating 65:12 130:21 155:24 159:3,17 160:12 255:12
violation 28:22 29:5,18,23 30:14 41:13,23 45:18,22,25 63:15 65:13,20 66:5,22,24 77:12 78:8 86:10 91:15,16, 17,18 95:13,19 96:1,8 100:9 102:14 103:1 109:14,19,20 128:19 135:19 136:9,25 138:1 149:21 150:1,10,13, 14,15 151:13,14 153:6,9,14, 24 154:3,13 156:21 157:7 158:2 159:13 160:19,20 176:17 182:10 183:11 184:1,8 185:25 188:6 247:2 254:24 255:7 258:21 268:20 273:17 288:4,5 291:9 292:19 294:12 296:3
violations 32:6 67:15 96:22 100:14 135:19 136:14 138:6,15,17,20 139:2 149:19,24 150:3 157:17 176:21 314:6
virus 294:20
visitors 294:19
vital 39:19
voice 267:8
volunteer 299:24
volunteers 299:21

W

W-I-L-L-E-Y 242:13
wait 58:2 59:16 100:17 188:23 261:12 313:15
wake 107:18
waking 220:18 276:23
walk 95:4,7 203:25
walks 203:17
wanted 26:8 68:20 74:23 82:24 83:12 114:25 135:24 154:20 159:7 198:10 219:3 243:12 251:14 257:11,14 272:20 298:17 299:16 304:5
wanting 200:10 226:1 276:14
warning 13:16 14:8 15:7 29:11,17 30:7 59:19,21 60:8,18 139:21 140:9 251:9, 16,18,21 252:24 257:10 301:10,12 303:24
warnings 117:5,8 177:5
warranted 62:11,14 64:4 183:6
watch 275:8
watched 139:22 251:10 252:18
watching 140:4,5
ways 122:2
weaknesses 201:2
wear 31:23 88:4,13 91:21 92:2 93:8 114:7 122:8,10 130:21 235:2 249:18 260:23 262:25 263:5 271:2 277:12, 18,23 278:12 280:3 292:5,

21 293:13
wearing 92:1 93:1,19,20 94:18,20 118:14 139:19,20 220:20 236:7 251:6 262:3 266:2 279:2 285:22 291:20 294:18 295:2,12 296:4 309:12
weather 296:12,13
Wednesday 320:21
week 275:10,13 287:5 319:20 320:19
weekends 287:6
weeks 229:25 233:15,17 274:22 319:8,19 320:14
weighed 128:5
weighing 6:7
weight 318:24
West 293:15,25
whatsoever 134:17
wheel 210:8 277:20 278:1 291:18
whiff 293:19
wife 76:23 207:14 274:22 276:13,21 300:15 304:8 308:14
willed 242:24
Willey 4:4 242:5,6,11,13 244:13
willingness 114:15,16 303:16
withdraw 22:1 133:17 189:7 192:9 194:2 235:14
witnessed 48:12,15 50:21, 23,25 51:8 162:20 184:23, 25 188:5
witnesses 3:1 51:9 57:6 144:3,17 167:20 315:9,11
woke 106:1 232:4 275:3 276:13
wondering 224:5
wooden 297:15
Woods 293:24,25
word 8:25 43:14 51:6 148:23 163:7 166:21 217:7 246:13 266:21 321:4
words 43:9 75:6 116:1 136:19 167:8,15 170:5 217:13 234:2,7 241:19 252:18,19,21,24 267:21 308:6
work 9:23 13:8 56:25 79:3 91:7 102:5 115:24 119:3,8,9 121:19 122:16 125:11 144:6 146:12 147:13 182:6,7 207:16 208:1 210:25 220:11 223:21,23,24 224:3 251:23 253:8 265:7 271:5,14 287:18 290:19 291:11,25 292:7 299:22 303:17 304:20,24 307:19 309:5 310:8 314:23
workaround 210:7,16,20
worked 78:24 79:8 80:1 121:2,5,6 146:6,10,14,16 206:20 258:9 259:6,10,13, 15 270:14,25 299:6
workers 262:9
working 38:15,17 72:2 76:5,7 92:12,18 201:24 218:13,18,23,25 233:10 257:6 262:10 267:23 268:18 270:6 275:20,22 276:1 277:16 284:13 292:3 293:22 296:8,10 298:17,23 299:11, 20 300:20 307:25
workout 307:17
works 91:1,6 102:3 239:4 321:6
world 265:20
worried 144:23
worry 306:11
worst 25:4 87:23 191:6
worth 230:11
worthy 25:1
write 66:8 74:15,17,20,24, 25 78:19 80:10,13 82:5 83:7,18 97:23 111:1,2 130:2,3,7 167:1 207:17 208:20,22 218:2 241:5 256:25 259:4
write-up 108:16 203:8 287:15
write-ups 202:17 203:24 310:2
writeup 261:7
writing 110:20 203:6 217:12 287:11 310:6,24,25
written 13:16 14:3,5 15:9 26:16 66:9 72:18 81:11 85:3 87:15,16 95:2,9,13 96:4 97:24 99:16,17 108:13 110:6 111:8 112:12 130:19 167:2 174:1,19 177:18 178:7,8,13 190:3 192:13 202:19 208:4 210:24 211:3 213:10 232:11 253:3,4 259:1 260:19 261:1,9 263:25 264:13,16 266:20,24 277:7 288:2 291:5,7 301:12 309:14 310:3,4 311:9,15,20 313:11,13
wrong 9:2 52:14 223:14,16 234:24 281:17 300:21 304:12
wrongdoing 167:12 185:5 199:25
wrongfully 163:5
wrote 83:4,15 84:2 111:3 190:14 208:9 217:3,6 256:14 263:14 264:16 283:3 284:9 304:7 308:6

Y

year 179:8 203:23 242:16, 17 243:24 248:15,16 252:15
years 12:20,23 23:1 34:22 38:4,7 54:7 67:22 71:7 79:6 80:18 84:1 108:2 112:8 113:1,7,13,16 120:16 121:9, 11,13 122:5 127:21,22 142:9,16 146:3,9,25 194:15, 19,21 195:1,3,24 197:10 198:20 219:2 226:16 227:20 228:8,18 242:16 243:7 245:13,16,23 247:25 257:3, 5 258:11,12 272:12,13 288:15 298:11,20 299:15, 20,21 300:4 301:3,11 305:17 306:9
years' 230:11
yelling 210:3
yes-or-no 231:6

Z

zip 277:18
zone 293:22
Zoom 105:25 297:15 320:1, 9,13

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Re: Gary Schvaneveldt Appeal
Closing Argument

Dear Mr. Catten,

By this correspondence, I am submitting Gary Schvaneveldt's (hereafter "Gary") closing argument in regard to his appeal, the hearing on which occurred on April 21, 2021. I am enclosing with this argument a complete copy of the transcript of the hearing, and will make detailed reference to the sworn testimony contained therein. I have taken numerous direct quotes from the transcript, and set them out in the footnotes, with reference to the transcript pages. Whenever an exhibit number is referenced in this argument, it is to the evidence that was adduced and admitted during the appeal hearing.

Point I.
Because Gary was not afforded due process, his termination should be overturned.

As an employee of SDMFD, Gary had a property right to his public employment, of which he could not be legally deprived without procedural due process of law *Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The Department's policies on due process requirements.

SDMFD (hereafter "the Department") has set up specific policies for the protection of an employee's due process rights when any type of discipline of that employee is involved. Policy 1017 (Exhibit 3) provides that the procedure contained therein "will guide the Department supervisors in taking the appropriate Corrective Action using coaching and counseling, Performance Improvement Plans (PIP), reprimands and Discipline." "Discipline" is defined as "The term used for Corrective

Actions that are punitive in nature and may be subject to certain due process and appeals rights (Utah Code 10-3-1106)." Policy 1017.2.1.

Policy 1017.2 is clear that "It is the policy of the Department that supervisors administer Corrective Action in a corrective, progressive, and lawful manner." The definition of "Lawful" is "in that the Department will provide Due Process rights whereby employees are given reasonable notice and an opportunity for the employee to respond to allegations," with a specific reference as "see Policy 1016." When asked about this specific policy, Chief Stone agreed that it is Policy 1016 that provides due process rights to the Department's employees.[1]

Policy 1016.2 provides that "This department takes seriously *all complaints* regarding service provided by the Department and the conduct of its members, and further provides that "[t]he Department will accept and address *all complaints of member misconduct in accordance with this policy and applicable federal, state and local law."* (Emphasis added).

Policy 1016.3 defines "personnel complaints" as "any allegation of misconduct or improper job performance by any employee that, if true, would constitute a violation of department policy or rule or federal, state or local law."

Policy 1016.3 goes on to state explicitly that "[a]llegations or complaints may be generated *internally* or by the public."

When it comes to "allegations or complaints … generated internally," the requirements incumbent upon members of the department are stringent.

For example, when "[a]ny department member" becomes aware of alleged misconduct, that member "*shall* immediately notify a supervisor." Policy 1016.4.2(b).

When it is a supervisor initiating the complaint, Policy 1016.4.2(c) states that the supervisor is required to initiate a complaint under two circumstances. The policy states:

> "Supervisors *shall* initiate a complaint
> [1] *based upon observed misconduct*
> ***or***
> [2] *receipt from any source alleging the misconduct of a member that, if true, could result in disciplinary action*." (Emphasis and format added).[2]

Policy 1016.6 requires that "[a]ll allegations of misconduct will [mandatory] be

---

[1] Q. Do you understand that it is Policy 1016 that provides due process rights to an employee?
A. Yes.
Transcript, p. 39

[2] The word "shall" in the Policies of the Department means that the action is mandatory. See Policy No. 103.4, (Exhibit 20): "Shall or will – Indicates a mandatory action."

investigated." It goes on to provide that where the supervisor of the member is the complainant, the fire chief or a designee of the fire chief "will direct that *another supervisor* investigate the complaint." (Emphasis added).

Under the requisites of Policy 1016, then, in the situation in which a supervisor has observed misconduct, that supervisor is to initiate a complaint, but is not empowered to investigate the misconduct by himself. To the contrary, where the supervisor is the complainant (the person who has initiated the complaint), it will be up to another supervisor, assigned by the fire chief or an authorized designee, to investigate. As pointed out above, *all* allegations of misconduct must be investigated under the Department's policies. Policy 1016.6.

Department policy makes clear that when the non-reporting (and thus presumably fair and objective) supervisor undertakes the investigation, certain mandatory requirements are necessary, as set forth in Policy 1016.6.1, which requires, among other things, that "The supervisor *shall* [mandatory] ensure that the procedural rights of the accused member are followed." Among the procedural rights are those set forth in Policy 1016.6.2, which states that "[t]he following procedures should be followed with regard to any accused member subject to investigation by the Department."[3] Following that directive, nine specific procedures are set forth (and indicated in the following footnote).[4]

---

[3] The word "should" here "indicates a generally required or expected action, absent a rational basis for failing to conform. Policy 103.4 (Exhibit 20).

[4] They are as follows:

> "Prior to any interview, the member should be informed of the nature of the investigation.
>
> "Interviews of accused members should be conducted during reasonable work hours of the member and, if the member is off-duty, the member shall be compensated if required.
>
> "No more than two interviewers should ask questions of an accused member to prevent confusion or misunderstanding.
>
> "All interviews shall be for a reasonable period or duration and the member's personal needs shall be accommodated.
>
> "No member shall be subjected to offensive or threatening language nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions and be subject to discipline for failing to do so. Nothing administratively ordered may be provided to a criminal investigator. An appropriate *Garrity* warning shall be issued to the member prior to initiating questioning.
>
> "The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview.
>
> "A member subjected to interviews that could result in punitive action shall have the right to have a representative of his/her choosing during any interrogation. However, in order to maintain the integrity of each individual member's statement, involved members shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed.
>
> "All members shall provide complete and truthful responses to questions posed during interviews."
>
> "No member may be compelled to submit to a deception detection device/polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation."

Once the investigation is completed, a report regarding it is generated and forwarded to the Fire Chief through the chain of command. Policy 1016.7. That report is subject to modification or recommendation, and only after "the Fire Chief is satisfied that no further investigation or action is required by staff," shall he "determine the amount of discipline." Policy 1016.7.2. It is only at that point that the member – who has been informed of the nature of the investigation, interviewed in accordance with Department policy, (with the possible involvement of counsel), and given a chance to respond (and even given a *Garrity* warning to compel response) – is provided with the information from the Fire Chief and the opportunity to respond. Policy 1016.7.2. It is only after all of these hoops have been jumped through that a Pre-Disciplinary hearing is to take place. Policy 1016.7.2(c); Policy 1016.8.

The Department's confusion over what constitutes "discipline"

As pointed out above, the definition of "Discipline" under Policy 1017.2.1 entails corrective actions that are punitive in nature and "may be subject to certain due process and appeals rights." Unfortunately for the Department, there appears to be no common consensus among its top management as to what actually constitutes such "discipline."

The Fire Chief, Dane Stone, defines "discipline" one way:

Q. When I talk about discipline, let's make sure that we've got our terms correct. Is a verbal warning a form of discipline?
A. Yes.
Q. A written reprimand would be a form of discipline?
A. Yes.
Q. PIP [Personal Improvement Plan] would not be?
A. PIP would be part of discipline.
Q. Okay. A suspension would be discipline?
A. Yes, sir.
Q. A demotion?
A. Yes, sir.
Q. And termination would be a form of discipline?
A. Yes.

Transcript, p. 15.

The Deputy Chief, Dave Powers, defines "discipline" quite another way:

Q. I probably need a little bit of clarification. What do you consider to be discipline?
A. Discipline is anything punitive.
Q. Well, is a verbal reprimand discipline?
A. Not according to our policy.
Q. Written reprimand, is that discipline?
A. Not according to our policy. It's considered corrective action.

Q. Okay. Time off, would that be considered discipline?
A. Yes.
Q. Suspension, would that be considered discipline?
A. Yes.

Transcript, pp. 177-179.

Given this, it is difficult to discern precisely what the Department's actual policy is, at least in practice, with regard to "discipline" and the due process rights attendant thereto. According to Policy 103.3 (Exhibit 20), it is the Fire Chief who "shall be considered the ultimate authority for the content and adoption of the provisions of this [policy] manual and shall ensure compliance with all applicable federal, state and local laws," a mandate that the Fire Chief himself reviewed before commencing the disciplinary proceedings against Gary Schvaneveldt.[5] Nonetheless, it is Deputy Chief Powers who generally articulated the Department's requirements with regard to due process (or the lack thereof).

Be that as it may, it appears that there is a clear consensus that what Gary was subjected to in this case was discipline, to which due process rights attached. Fortunately, the Department has adopted policies outlining exactly what due process must be afforded an accused Department member, and what procedures are mandated in support thereof. Unfortunately for the Department, it has opted to ignore or outright violate those policies.

The Department's skewed and incorrect contention that the due process requirements of Policy 1016 do not require investigation when the member accused of misconduct has been actually observed by his supervisor.

The provisions of Policy 1016 are clear and unequivocal. As pointed out above, Policy 1016.6 requires that "[a]ll allegations of misconduct will [mandatory] be investigated." It goes on to provide that where the supervisor of the member is the complainant, the fire chief or a designee of the fire chief "will direct that *another supervisor* investigate the complaint." (Emphasis added). Policy 1016.4.2(c) requires that a supervisor must be a complainant where the supervisor has actually observed misconduct, or where such has been reported to that supervisor. In such a case, the complaining supervisor cannot be the investigator, but another supervisor is assigned to investigate. Policy 1016.6. [6]

---

[5] Q. Do you understand this policy [103] to mean that as fire chief, basically the buck stops with you when it gets to making sure that the policies and procedures of the department are complied with by the employees of the department?
A. I do.
***
Q. Now, did you review the requirement of the policy manual with regard to your obligations to make sure that the policy manual was complied with before you sent this letter, this Notice of Pre-Disciplinary Hearing, Exhibit 1?
A. I did.
Transcript, pp. 18-19.

[6] In this case, it is unclear whether a proper "complaint" was ever filed against Gary by the Department (see below). While Chief Stone admitted that the Department's actual complaint form could not be found in Gary's file, he asserted that there is more than one way for a complaint to be filed – "a notation in the Trakstar system." He admitted,

It is undisputed that no investigation was ever initiated or undertaken regarding Gary's asserted violations of policy that were set forth in the Notice of Pre-Disciplinary Hearing (Exhibit 1).[7] In fact, it was the position of Deputy Chief Powers that no investigation needed to be done, because, according to him, the due process mandates of Policy 1016 simply didn't apply to Gary's case. He stated that he did not even review Policy 1016 because "it's not applicable."[8] Under Deputy Chief Powers' distorted view of the investigative due process requirements of 1016, they only apply

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however, in response to the question, "Do you consider the Trakstar system to be a form of complaint?" he replied, "It's not a form of complaint." He went on to admit that there is no other log of "complaints" other than Trakstar:
Q. Do you have a separate log other than the Trakstar system that records and tracks complaints?
A. No.
Q. That's the only log you have?
A. Yes.
Transcript, p. 47.

[7] Chief Stone testified as follows:
Q. All right. You simply don't know whether there was an investigation?
A. I wasn't part of it.
Q. Have you asked anybody in this department as to whether there was an investigation of Gary?
A. That is -- we have discussed that. I was not part of the investigation, so I don't know how the investigation was done, Mr. Edwards.
Q. Well, that isn't my question. My question whether you have asked anyone in this department whether an investigation was done.
A. Into each of Gary's –
Q. Into each of the allegations that were made against Gary.
A. Yes. I have asked, and we have discussed that.
Q. And what is the answer?
A. ***There was no investigation done.***
Q. Okay. How important is it to you that the protocol here in Section 1016 be followed?
A. If an investigation is needed, it's important or warranted.
Transcript, pp. 68-69 (emphasis added).

Deputy Chief Powers admitted the same:
Q. ***So before the pretermination hearing there was no investigation with regard to these allegations?***
A. ***No.***
***
Q. ***Was there any investigation?***
A. ***No.***
Transcript, pp. 172, 176 (emphasis added).

[8] Q. Before sending the Notice of Pre-Disciplinary Hearing, did you review any policies and procedures of the department?
A. Yes.
Q. Which ones did you review?
A. I reviewed every violation that we listed as a policy violation. And I also reviewed the corrective action Policy 1017, I believe it is.
Q. 1017.
A. And I believe that's it that I can think of.
Q. ***Did you review 1016?***
A. ***No.***
Q. ***Why not?***
A. ***It's not applicable.***
Q. ***1016 is not applicable?***
A. ***It is not.***
Transcript, pp. 160-161 (emphasis added).

"based on accusations from anyone *other than a supervisor*." Transcript, p. 162 (emphasis added). According to him, "when they [supervisors] see something happen and they directly observe it, an investigation is not required." Transcript, p. 162.[9] In fact, Deputy Chief Powers went so far as to posit that a supervisor simply cannot be a complainant against a subordinate, by definition.[10]

Chief Stone is in accord.[11]

In Deputy Chief Powers' view, "observed misconduct" is far different from an "allegation" of misconduct. According to Deputy Chief Powers, if the misconduct has

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[9] Deputy Chief Powers has stated that "If it's directly observed by a supervisor [the member's alleged misconduct], an investigation is not usually required unless we perceive to be some type of conflict of interest there." The "we" he referenced "would be most likely me or any of the administrative staff that can see anything where there's a potential bias." These would be the fire chief and/or his deputy chiefs. The only "conflicts" cited by Deputy Chief Powers would be a situation in which brothers or brothers-in-law would be working together. Transcript pp. 181-182. There is no policy to that effect in place in the Department, however. Instead, this standard is in accordance with "best practices," a term that is neither found nor defined in the Department's policies. See Transcript, p. 182:
Q. Where do I find that particular standard in the policies and procedures of the South Davis Fire District?
A. You won't. It's best practices.
Q. Is there a policy that says, we will use best practices, and here's what they are?
A. No.
Transcript, p. 182.

[10] Q.So what does it mean when it [Policy 1016] says if the supervisor is the complainant? Under what circumstances would a supervisor be a complainant?
A. I think that you could have one supervisor file a complaint against another supervisor, and at that point we would initiate an investigation.
Q. ***But never in an instance in which a supervisor claims to have directly observed a violation of misconduct by someone they are supervising. Is that correct?***
A. ***Correct.***
Transcript, pp. 185-186 (emphasis added).

Q. If a supervisor initiates a mandatory complaint based upon observed misconduct, is that supervisor a complainant?
A. Can you state that again?
Q. Yes. If a supervisor initiates a complaint, which he shall do based upon observed misconduct, does that supervisor become a complainant?
A. No.
Q. He does not?
A. No.
***
Q. [I]f a supervisor initiates a complaint based upon observed misconduct or -- well, let's talk about based upon observed misconduct. Let's presume that he is the person that observes the misconduct. Does he become a complainant, the supervisor?
A. No.
Q. If a supervisor initiates a complaint based on receipt from any source alleging the misconduct of a member that, if true, could result disciplinary action, does he then become a complainant?
A. Could you repeat that?
Q. Yes. If a supervisor initiates a complaint based on information, receipt from any source, alleging the misconduct of a member that, if true, could result in disciplinary action, under those circumstances does a supervisor become a complainant?
A. No.
Transcript, pp. 213-215.

[11] "There was no investigation because there didn't need to be an investigation into it because it wasn't two people complaining."
Transcript, p. 50

been "observed," there is nothing "alleged" about it. The supervisor's "observation," documented in Trakstar, definitively (and irrefutably) establishes the *fact* of the misconduct. If a supervisor says it happened, it happened. This being the case, there was no need for an investigation,[12] since Policy 1016 didn't apply here.[13] By Deputy Chief Powers' definition, there was no "alleged misconduct" that would trigger an investigation; there was only "directly observed misconduct," which would not, because the "direct observation" obviates the necessity of investigation. The "direct observation," in and of itself, established the misconduct, by definition.

When queried about what protections the accused employee then has against a biased or unfair accusation of "observed misconduct" by a supervisor, Deputy Chief Powers offered two.

First, the integrity of the supervisors themselves would somehow always preclude any wrongful or inaccurate reporting of "observed misconduct." Supervisors don't make mistakes. They're always honest and ethical. If they say that a member broke the rules, he did. End of discussion. In fact, there is no need for discussion.[14]

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[12] When asked to explain the wording in Policy 1016.6.1 that states "if the supervisor is the complainant," Deputy Chief Powers couldn't come up with any explanation:
Q. I'd like to go back to [Exhibit] No. 21 for just a second. 1016.6.1. "If the supervisor is the complainant." How is a supervisor possibly a complainant if they are not the direct observer? Do they make a complaint on the basis of something that they heard from someone else?
A. No. I can't think of an example.
Transcript, p. 183.

He did, however, assert that there was somehow a difference between an "allegation" of misconduct, and a direct observation of misconduct. Transcript, p. 184. Of course, no such difference is found in the Department's policies, however. In fact, as pointed out *supra*, Policy 1016.6.1 specifically says that when a supervisor "has any personal involvement" (which would include direct observation), the investigation of the "alleged misconduct" devolves on a neutral supervisor. A supervisor's report/complaint of misconduct is only "alleged" until it is established after a full investigation. The misconduct is not proven until that investigation is complete.

[13] While disparaging the idea that any formal "complaint" that fits the format requisites set forth in Policy 1016.6.3 is necessary, outside of what might be noted in Trakstar, Deputy Chief Powers nonetheless assured that Captain Maxwell's "Written Reprimand," attached as Exhibit A to the Notice of Pre-Disciplinary Hearing (Exhibit 1 hereto) "follows all the components of a complaint." One wonders why following "all the components of a complaint" would be necessary if the due process requirement of a "complaint" is unnecessary.

[14] Q. "All allegations of misconduct will be investigated as follows." Now, are you claiming that the allegations that were made against Gary Schvaneveldt –
A. They were not allegations.
Q. Can I finish?
A. Yeah.
Q. That the assertions, allegations, whatever you may want to call them, against Gary Schvaneveldt that are found in Trakstar by his supervisors were not allegations of misconduct?
A. They were not. They were direct observations.
Q. *And you have to trust that these direct observations are sufficiently true that there is no need to ask another non-supervisor supervisor to investigate the complaint. Is that your position?*
A. Yes.
Q. And so none of the procedures that are set forth in 1016 are applicable to Mr. Schvaneveldt? Is that your position?
A. Correct.
Transcript, p. 165. (emphasis added).

Second, if an employee felt that a supervisor had inaccurately or wrongfully reported misconduct, the employee could file a grievance – apparently within the Trakstar system.[15]

The plain language of Policy 1016 is in direct contravention to Deputy Chief Powers' definitional gymnastics, however. It takes no leap of logic or strained interpretation of the clear language of the policy to conclude that a report by a supervisor of "observed misconduct" constitutes a complaint, as set forth in Policy 1016.4.2, and that because the supervisor has "personal involvement regarding the alleged misconduct," a neutral supervisor must be assigned to investigate it, as set forth in Policy 1016.6.1. The language is plain on its face.

None of that was done here.

As far as the member's ability to file a grievance in the event that he disagrees with a complaint of misconduct from a supervisor, it is important to note that the Department never made any reference to any grievance procedure in the Notice given to Gary. Testimony from Lane Price, a retired 31-year veteran of the fire service, testified that he had never heard or seen a situation in which a subordinate filed a grievance with regard to a supervisor putting something in Trakstar with which the subordinate disagreed.[16] Chief Stone testified that while "I have done that in my history," he could not say "right offhand" that he was aware of anybody, ever, in the history of the Department besides himself that had ever done so. Transcript, p. 141-142.

The Department has implied that if it were required to actually follow the mandates of Policy 1016 to investigate every complaint of alleged misconduct by its members, such would be an impossibly difficult administrative burden – it "wouldn't happen."[17] The apparent conclusion the Department wishes to be drawn from this is that Policy 1016 must not actually mean what it says because full compliance would be impracticable. This assertion is disingenuous for two reasons.

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[15] Q. What if the supervisor is wrongfully accusing a firefighter of misdoing? Do you just take it on the word of the supervisor?
A. We have to believe that we have the right people in place through being sworn into a position that they are acting in good faith. And if, for some reason, that's not happening, the employee has the right to file a grievance, and then it would be investigated.
Transcript, p. 163.

[16] Q. Are you aware of any instance in which a supervisor has put something in Trakstar that a subordinate did not like, and he either grieved it, filed a grievance, or put his own reply in Trakstar?
A. I've never heard that or seen that.
Transcript, p. 204.

[17] Q. Do you have an opinion of what the administration of the department would look like if supervisors who witnessed misconduct or a policy violation weren't allowed to enter into any kind of corrective action, or if it was serious enough to enter into disciplinary action without bringing in another supervisor?
A. It wouldn't happen.
Transcript, p. 188.

First, Policy 1016 is clear in its requirements. There exists no exception because compliance with its mandates might be inconvenient to the Department.

Second, the testimony adduced from Deputy Chief Powers himself puts the lie to the assertion of "excessive burden." At the same time that Deputy Chief Powers said that it was his opinion that the administration of the Department "wouldn't happen" if an investigation of alleged misconduct were required, he also testified that there would be no problem of administration if every time an individual who was "written up," (or any action taken against him), filed a grievance with the Department on every such action – which grievance would trigger an investigation. This last conclusion, he posited, was "based on the number of corrective actions that are taken at all."[18]

The Department can't have it both ways. The Department can't say on the one hand that chaos would ensue if the Department actually complied with Policy 1016's mandate of a neutral supervisor investigation, but on the other hand that there would be no problem at all if every member against whom disciplinary action was taken filed a grievance, which would also require an investigation.

Of course, the line supervisors do not understand the Department's policies in the same way as Deputy Chief Powers explained them. To the contrary, testimony from Captains Sayre and Maxwell were clear that they have never understood or received training that the only time a supervisor should initiate a complaint against a member they are supervising is if the supervisor has not personally observed a violation of policy. To the contrary, they understand that when they observe a subordinate violating policy, they have a duty to register a complaint.[19]

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[18] Q. You [were] just asked about what it would look like if it was required that a supervisor bring in another supervisor every time that there is some sort of a complaint. What would it look like if every time a supervisor did something that a subordinate didn't like grieved it?
A. Let me see if I get your question correct. You're asking if every time – every time an individual was written down or action was taken against him if they grieved every action that we took?
Q. Yes.
A. Is that what you're asking? I don't see necessarily a problem with it based on the number of corrective actions that are taken at all.
Q. So let me see if I understand this, then. You're saying it would be chaos if it were required that we bring in supervisors every time a supervisor had a complaint, but it would not be chaos if every time the supervisor wrote somebody up the employee grieved that. Is that understanding correct?
A. Absolutely.
Transcript, pp. 189-190.

[19] Captain Sayre testified as follows:
Q. ***You observe somebody who is violating a policy or procedure. Do you understand that you can file a complaint against them with the administration?***
A. ***I can file a complaint, yes.***
Q. ***Do you understand that you should do that?***
A. ***Yes.***
Transcript, pp. 155-256 (emphasis added).

Captain Maxwell stated the same:
Q. Have you ever been instructed that you are only to initiate a complaint against a person that you are supervising if you have not personally observed a violation of policy by that person?
A. I have not been instructed that.
Transcript, p. 258.

Policy 1016.5 mandates that "Supervisors shall ensure that all complaints against a member "are documented on a complaint form," and that "The supervisor shall ensure that the nature of the complaint is defined as clearly as possible." It goes on to require that "All complaints and inquiries should be documented in a log that records and tracks complaints," which "shall include the nature of the complaint and the actions taken to address the complaint." Moreover, the Department is required to annually audit that log and send a report to the fire chief, who then "shall provide a copy of the audit report to the Board."

The Department has failed in this requirement. It has no separate log for complaints. Chief Stone says that the Trakstar system meets this requirement.[20]

This doesn't work, however. As admitted by Chief Stone, the Trakstar system is not a not a form of complaint. (See footnote 6, *supra*). In fact, as can be seen in the record, Trakstar notes can contain almost anything, including attacks on a subordinate as a "management drain," behaving like a "toddler" (twice), a ""management nightmare, and I hope that I never have to experience another employee like him in my career," "a deceitful, insubordinate employee that is a management and energy drain for anyone associated with him," and "a management vacuum."[21] Trakstar notes can also be used to document (and use as ammunition) simple expressions of opinion that the reporting supervisor doesn't like, such as the discussion between Paramedic Shafto and Gary regarding facemasks and "open carry" of firearms in a grocery store. *See* Transcript, pp. 222-223. Unfortunately, Chief Stone relied on such expressed opinions in firing Gary, by his own admission. *See* Transcript, p. 119.

Trakstar can be, and is, a grab-bag of whatever a supervisor wishes to put into it. What it is *not*, however, is a complaint log that sets forth the nature of a complaint, "defined as clearly as possible," and the actions taken to address the complaint.

This failure on the Department's part has harmed Gary, and certainly deprived him of his due process rights. There was no "complaint" filed against him to which he could reasonably respond in accordance with the Department's policies – only the

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[20] Q. I see. 1016.5, again, looking at Exhibit 21. "All complaints and inquiries should be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint." Do you have [a] separate log other than the Trakstar system that records and tracks complaints?
A. No.
Q. That's the only log you have?
A. Yes.
Q. And do you consider that the Trakstar system log complies with this particular policy requirement?
A. Yes. Yes.
Transcript, p. 48.

[21] Exhibit 1, Shafto Trakstar note, December 31, 2020.

avalanche of allegations in the admittedly incomplete Trakstar system.[22] And there is no record of "the actions taken to address the complaint." Here, it appears that the only "action" taken was to parse through Trakstar, pull out anything that might be considered misconduct, throw together a Notice of Pre-Disciplinary Hearing without investigating any of the things drawn from Trakstar, and then confront Gary with them.

The Department owed a duty to Gary to undertake a full investigation of the allegations against him. The Department's failure to do so violated Gary's due process rights, and renders his discipline fatally flawed.

The Department's tortured and, frankly, illogical, twisting of the plain language of the Department's policies must be rejected. Deputy Chief Powers' reading of the language makes no sense. If, for example, an assertion by a supervisor that his subordinate has violated a policy, which might result in discipline, is not an "allegation" subject to the due process requirements of Policy 1016, as referenced in Policy 1017, ("whereby employees are given reasonable notice and an opportunity for the employee to respond to allegations."), what is it? An established and incontrovertible fact? According to Deputy Chief Powers, yes; as pointed out above, it is his position that the "direct observation" is somehow a proven fact, which cannot be disputed because … well, a supervisor says he saw it and … well, we must trust that supervisors always tell the truth – or at least "[w]e have to believe that we have the right people in place through being sworn into a position that they are acting in good faith." This flies in the face of both logic and the law.

True due process does not require that we are under some legal or logical compulsion to believe that supervisors always tell the truth, unbiased and unvarnished. Neither do the plain requisites of the Department's policies, which provide a "fail-safe" mechanism – that where a supervisor accuses a subordinate of wrongdoing, a third-party non-supervising supervisor is brought in to guarantee the objectivity that Deputy Chief Powers denies is necessary. The position of the Department, professed through Chief Stone and Deputy Chief Powers in the appeal hearing – a that a supervisor has not only the power, but the wisdom, to act as judge and jury with regard to an irrefutable claim of a subordinate's violation of policy (whether "directly observed" by the supervisor or not) – makes no sense. It is just plain wrong, and must be rejected.

The Department owed a duty to Gary Schvaneveldt to fully investigate the assertions against him that could lead to discipline, in accordance with the Department's policies. The Department did not do so. Gary was denied the due process the Department owes to him. The process was irretrievably flawed as a result. His firing

[22] Paramedic Shafto admitted that the Trakstar notes on which the Department relied were incomplete. He testified that "Without seeing what the reference is for these notes [between July 2020 and the end of December, 2020}, there were other notes that I didn't put in there with positive things that Gary had done as well." He mentioned that he had logged "one note that I put in there regarding the amount of work that he had done organizing the Association Halloween party at the Cross E Ranch." He had no explanation as to why those positive things didn't make their way into the Notice of Pre-Disciplinary Hearing. Transcript, pp. 219-220.

was thus unjustified.

The Department's view of "adequate notice" of the policies Gary was accused of violating.

It is axiomatic that due process affords an accused adequate notice of the allegations against him, with the opportunity to be heard in response thereto.[23] The Department's policies are in accord. Before a Pre-Disciplinary Hearing may be held, the Fire Chief is required to provide the accused member with written notice of his access to all of the materials considered by the Fire Chief in recommending proposed discipline, and an opportunity to respond orally or in writing to the Fire Chief. Policy 1016.7.2.

In this case, however, Gary was not given adequate notice of all of the allegations against him or, importantly, the possible discipline that could be levied as a result thereof. A review of the Notice of Pre-Disciplinary Hearing, Exhibit 1 hereto (hereafter "the Notice"), clearly shows that it does not meet the requisites of adequate notice.

For example, there are seven numbered "Allegations" that Gary was required to respond to. Four of those Allegations had numerous "sub-allegations," referencing various actions that were alleged against Gary.[24]

Of the seven numbered Allegations, only four referenced the specific policies Gary was accused of violating.[25] Deputy Chief Powers stated that the reason for this was for Gary's convenience – so that Gary wouldn't have to be bothered to look up all of the policies that he was accused of violating. In any case, he said, Gary already knew what he had done wrong. There was no need for the Department to tell him what it was.[26]

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[23] "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). *See also Richards v. Jefferson County*, 517 U.S. 793 (1996).

[24] Allegation No. 2 contains three bullet-pointed sub-allegations; Allegation No. 3 contains eleven bullet-pointed sub-allegations; Allegation 4 contains five bullet-pointed sub-allegations; Allegation 7 contains three sub-allegations.

[25] Allegations 1, 4, 5 and 6.

[26] Q. Why is it that you did not list the particular policy that you claimed were violated with regard to all seven of these [allegations]?
A. So the reason that not every one of them were listed is so that Mr. Schvaneveldt could see through a quick reference through the matrix that he could see that these were actual items that were found in policy that were a possible violation. I did not want to go through each individual and cite every single policy to require Mr. Schvaneveldt to have to look up each individual policy on his own.
***
Q. Do I understand you correctly to say, then, that you did not reference the policies for Mr. Schvaneveldt's convenience, so that he wouldn't have to look them up?
A. They were already detailed with the matrix as far as the matrix being adopted as an appendices to show that they were part of policy.
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Q. … And do you think it would have been helpful for Mr. Schvaneveldt to have been able to see what particular policy he was accused of violating that would have given rise to the offense of insubordination major under 1.B?
A. Based on his previous history that we've had with him, no.

And while Deputy Chief Powers conceded that it was the Department's burden to inform Gary of what the Department was accusing him of, he claimed that the Department's Notice was "clear enough, with the caveat that he knew that if he had any questions of any portion of the predetermination letter or any of the processes, that he could ask us questions on what he needed to do." When asked, "So you didn't see any need to give any more detail with regard to the allegations that were being made against him, especially with reference to every policy that he was being accused of violating?" he replied "No." Transcript, p. 160.

This doesn't cut it. The burden of figuring out what the Department's case against him might be, and the policies he is accused of violating, does not devolve on Gary, just as it does not devolve on anyone accused of wrongdoing to try to read between the lines as to what that wrongdoing is, what the severity of the wrongdoing is alleged to be, and what the possible punishment for it is. Gary cannot be "presumed" to know what the Department is thinking, or what the Department specifically means. (Actually, it is clear from the foregoing that the Department doesn't really know what it specifically means, either). To the contrary, the burden was, and is, on the Department, if it is to afford Gary due process. Otherwise, how could Gary truly defend himself? How could he gauge the severity of what he was accused of doing? He couldn't and, for that matter, he still can't.

The Department's burden was not met here. Due process was not afforded Gary

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Q. Why do you say that?
A. Because whenever we have brought anything to his attention and made reference to policy, his behavior is – was very similar to the way it was in the pre-disciplinary hearing. So –
Q. So you'd done it before and just decided not to do it this time?
A. Never had to do this type of action before.
***
Q. But you did reference the policies that you claimed he had made some violation of [in the past], correct?
A. Yes.
Q. And this time you just decided not to do that?
A. No.
Q. No, you decided – I'm sorry. This time you decided not to do that; is that correct?
A. Yes.
***
Q. Tell me what is correct, then. Because I don't see reference to all of the policies here with regard to each Corrective Action Matrix.
A. The question you asked me is if we didn't do it at all, and I said that we did. We did it on some; we didn't do it on others.
Q. Right. But you didn't do it on all of them?
A. Correct.
Q. And you did that for his convenience?
A. Yes.
***
Q. I'm not talking about that [the Matrix]. I'm talking about notifying him as to which policies that he would have been accused of violating.
A. We gave Mr. Schvaneveldt I believe seven days, ten days after the notice of the pre-disciplinary hearing to ask us any questions he wanted. So if he had any questions on that, we would have been happy to answer that.
Q. So it was up to him to figure out what it is that you were accusing him of?
A. Mr. Schvaneveldt is aware of our policies, and I had documentation of that. So he would know what violation he already had done.
Transcript, pp. 155-159.

with regard to the notice necessary to inform him of precisely what policies he was accused of violating that would lead to punishment.

The Department's view of "adequate notice" of the punishment attendant to the Allegations of wrongdoing against Gary.

In a similar vein, the record shows that of the seven Allegations, only five reference the Corrective Action Matrix (hereafter "the Matrix") relative to what possible corrective action and/or discipline was sought.

In fact, even the references to the Matrix (Exhibit 2) are confusing. For example, Allegation 4 references Matrix 22, "Out of Uniform or no Uniform." A quick look at the Matrix reveals that there are different corrective actions prescribed for the situation in which the alleged offense is a "1st Offense," a "2nd Offense" or a "3rd Offense." Unfortunately, the Notice does not indicate whether the discipline sought is for a first, second or third offense. In fact, none of the references to the Matrix contained in the Notice indicate which numbered offense is alleged, making it impossible for Gary (or anyone else) to determine what punishment was sought with regard to any of the Allegations.

This situation is further muddled by the assertion of the Department's counsel that "None of these incidents taken in isolation would likely result in termination, with the exception being the major insubordination incident. Even with that incident, the Department acknowledges that termination in that circumstance would be unlikely." Transcript, pp. 98-99. In light of the fact that the Notice contains no reference to what punishment is sought, individually or in aggregate, with regard to the Allegations and sub-allegations contained therein, it is impossible to divine what type of punishment the Department considered to be proper, and whether, cumulatively, termination would even be on the table. And yet, termination was sought and issued. The manner by which this was determined, and the factors that led the Department to move from what it admits were minor offenses to termination – the equivalent to the death penalty in the marketplace – is entirely missing.

Even more baffling is the question of whether the sub-allegations were to be considered separate offenses, or whether they were to be lumped together in each Allegation as one offense. For example, when asked to explain Allegation No. 3, Chief Stone said that in total, the eleven sub-allegations were individually minor, but that in total they were not minor. He also indicated that in total they were not major, either. He indicated that he did not consider Allegation No. 3 to be a first offense, but he declined to "put it in a specific matrix in first, second, or third," saying, "Just the totality of them and the number of them." When pressed, he indicated that "there's 11 offenses," but when asked if it was up to Gary to try to figure out from the Notice whether Allegation No. 3 was a first, second or third offense, he replied, "It's a minor offense," clarifying that it's "eleven minor offenses." Asked whether he totaled all eleven minor offenses into one great, big major offense, he replied, "You could." When asked whether indeed that was what he did, he replied "[t]hat was considered in the whole – with his file and everything

else that was – that we did in the pre-disciplinary hearing for him to account for each of those." *See* Transcript, pp. 96-98.[27]

A more difficult thicket of obfuscation to decipher is hard to imagine. From the testimony, we gather that Allegation No. 3 isn't minor, but it isn't major, either. It might be eleven minor offenses or it might be one big offense. It isn't classified as a first, second or third offense, and there is no indication in the Allegation what punishment is being sought. Ultimately, Allegation No. 3 is procedurally and substantively unintelligible. This begs the question: How on earth could Gary figure out what Allegation No. 3 is, and what punishment was being sought with respect to it? Chief Stone couldn't articulate it … how was Gary to figure it out?

Allegation No. 3 is not alone in this regard. When asked about Allegation No. 4, Chief Stone said that because "there was five different times that he [Gary] was out of uniform," he considered Allegation No. 4 to be a "fifth offense." Of course, there is no matrix for a "fifth offense," and Allegation 4 itself reveals no information as to what numbered offense is being alleged, and what the possible punishment might be.

It gets worse. When it was pointed out to Chief Stone that Allegation No. 6, having to do with violating the face mask policy, had no reference to the Matrix at all, he

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[27] Q. Okay. Now, we look at No. 3 here on page 2 of the Notice of Pre-Disciplinary Hearing.Corrective Action Matrix 16.A, "Improper performance of assigned duties, minor." And you've listed 11 violations. Are they minor in total, or are they minor individually?
A. Each individual one is a minor.
Q. Did you consider them in total to be minor?
A. No.
Q. Did you consider them in total to be major?
A. No.
Q. Did you consider them in total to be more than a first offense?
A. Yes.
Q. Did you note in here -- well, what kind of offense -- first, second, or third offense under corrective action 16.A?
A. I didn't put it in a specific matrix in first, second, or third. Just the totality of them and the number of them.
Q. Well, if you're going to refer to 16.A,minor, shouldn't you put whether this was considered a first offense, a second offense, or third offense?
A. There's 11 offenses.
Q. Exactly. So why is it you didn't put down 11th offense?
A. Why didn't he put get put down as 11th offense?
Q. Why is it you didn't write that down?
A. They're specifically written down.
Q. I see. So he is supposed to be able to figure out from this that this is more than a third offense?
A. It's a minor offense.
Q. A minor offense. So it was one minor offense?
A. No.
Q. It's 11 minor offenses?
A. Eleven minor offenses.
Q. Okay. And then do you total those together into a one great, big major offense, because you've got 11 minor offenses?
A. You could.
Q. Did you? is my question.
A. That was considered in the whole – with his file and everything else that was -- that we did in the pre-disciplinary hearing for him to account for each of those.
Transcript, pp. 96-98.

admitted that there would be no way for Gary to know what kind of trouble he would be in with regard to the kind of penalty he might suffer, just by looking at what was put into the Notice.[28] In fact, at the appeal hearing, Chief Stone seemed to be struggling to find the proper part of the Matrix that would prescribe a suitable corrective action: "You could put it under 13." Transcript, p. 96.[29]

This was not the only time in the hearing that the Department appeared to be simply making it up as they went along when it came to prescribing the proper portion of the Matrix that would apply to the Allegations. After being pressed as to whether it was the Department's policy to punish a member twice for the same violation of policy, or whether it was right to aggregate violations in order to enhance the punishments set forth in the Matrix, Chief Stone was asked in cross-examination to look at Matrix No. 29, "Accumulation of unrelated offenses," third offense, which has as potential discipline suspension or dismissal. When asked "In your view, is that where things are with Mr. Schvaneveldt," the Chief replied, "Yes." Transcript, p. 131.

This was the first time that the accumulation of unrelated offenses under Matrix No. 29 ever raised its head in this case, and the first time that "suspension or dismissal" for its violation was ever mentioned. Of course, there exists the question of whether the sub-allegation "offenses" belatedly "accumulated" on the fly in the hearing were indeed "unrelated" or not. The fact that, for example, eleven sub-allegations were lumped together under one Allegation would seem, by definition to be "related" rather than "unrelated" offenses. The fact that there are instances in which the very same actions are listed as "offenses" under different Allegations would also militate in that direction.[30] In any case, there exists no reference in either the Notice or the Letter of Termination to Matrix No. 29, and there is no indication in either of those documents that any "offenses," related or not, would be accumulated or that Gary could be terminated based on such "accumulation." When confronted with the question of whether Gary's due process rights required that notice of Matrix No. 29 should be referenced if the Department was going to rely on "accumulation" to punish him, Chief Stone "guessed" that "you could put it on the pre-disciplinary hearing or the letter and let him know that

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[28]Q. So there would be no way for Gary to know what kind of trouble he's in with regard to the kind of penalty that he might suffer just by looking at what it is that you put in the notice of pre-disciplinary hearing. Correct?
A. For that offense, no.
Transcript, p. 96.

[29] The Department has a problem when it comes to its facemask policy. Not only is there any specific Corrective Action Matrix reference with regard to possible punishment for its violation, but it is clear that the Department selectively disciplined Gary for violation of the policy, while allowing other members of the Department to violate it with impunity. See Exhibit 23. When Gary requested a larger facemask because the one he was issued did not fit (See Exhibit 24), his request fell on deaf ears. See Transcript, p. 279. The Chief was certainly not made aware of it until the appeal hearing. See Transcript, p. 68.

[30] *See,* e.g., the assertion of a failure to do an engine check on December 4, 2020, which made its way into both Allegation No. 2 and Allegation No. 3. The assertion that Gary was out of proper uniform on December 4, 2020, made its way into Allegation No. 2 and Allegation No. 4. The assertion that Gary failed to meet the facemask policy on December 4, 2020, formed part of Allegation No. 2 and Allegation No. 6. These "offenses" are not only "related"; they are alleged as actions which deserve multiple punishments.

we could think that." In his view, this wasn't a problem, though, because the Notice said "The evidence of these allegations, along with your previous performance history, are attached as Exhibit A through E." The Chief concluded that this was sufficient; "It's in there." It wasn't "in there" at all. There was no reference to Matrix No. 29, ever, until the appeal hearing, despite Chief Stone's conclusion at the appeal hearing that "that is where things are with Mr. Schvaneveldt."[31]

Point II.

Gary's termination was based on factors he was not accused of, and had no chance to rebut.

The reasons given for Gary's termination in the Letter were not those listed in the Notice of Pre-Disciplinary Hearing.

At first blush, it would appear that the Letter of Termination (Exhibit 6), which states that "the bases [sic] for this decision [to terminate Gary's employment] were your numerous, repeated violations of policies, procedures, and rules that are documented in the January 5, 2021 Notice of Pre-Disciplinary Hearing" would be sufficient to alert Gary to the reasons for his termination.

Unfortunately, this is not the case. As it turns out, Gary's termination was based on other factors that were not contained in the Notice.

The Letter lists numerous other reasons for the termination – none of which were ever brought up before the Pre-Disciplinary Hearing, and none of which Gary had notice of as possible bases for termination.

More to the point, Chief Stone has admitted that the real reason for Gary's termination was Gary's demeanor in the Pre-Disciplinary Hearing – not the allegations contained in the Notice, nor proof of those facts.

What the Termination Letter says (and does not say):

The Letter states that among the reasons for Gary's termination were the following:

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[31] Q. In order to protect someone's due process rights, would it be your understanding that you need to let Mr. Schvaneveldt know that you were going to accumulate unrelated offenses under 29 and use the Corrective Action Matrix relating to No. 29?
[Objection here overruled; Chief Stone allowed to answer]
A. I guess you could put it on the pre-disciplinary hearing or the letter and let him know that we could think that. But we address that, if I'm correct. "The evidence of these allegations, along with your previous performance history, are attached as Exhibit A through E." It's in there.
Q. But no reference to 29?
A. No reference to 29; no, sir.
Transcript, p. 137.

> Beginning in 2006 and continuing throughout your career with the Department, multiple efforts have been made to correct your behavior. Multiple warnings, letters, suspensions, and a demotion have had little effect on this untoward behavior. Even multiple supervisors requesting repeatedly—in some cases begging—for you to follow SDMF policy has been unsuccessful. While some supervisors were mildly successful in the short run, not one supervisor has been successful in helping you break this pattern of disregard for safety rules, policies, or protocols.

Exhibit 6, p. 2.

No details whatsoever were set forth here, and none were ever specified in the Notice. When asked about the fact that he had not specified the "years of negative behavior" in the Letter, Chief Stone said, "I'm aware and I believe that Mr. Schvaneveldt understood or knew his negative behavior." When asked, "So you were presuming that he knew what you were talking about," he replied, "I presumed that, yes." Transcript, pp. 113-114. (As pointed out above, the Department does a lot of "presuming" that Gary can figure out what the Department is referring to in its written notices to him; *see* discussion at pp. 13-14, *supra*, and footnote 26).

Another reason listed in the Letter for Gary's termination was as follows:

> The effects of your behavior have resulted in many day-to day difficulties with the Department. Below are just a few:
>
> 1. You are putting yourself and crew in harm's way by not following safety practices and policies.
> 2. Your Battalion Chief cannot trust you as an acting captain, which is required in your job description and which makes it difficult for your Battalion Chief to replace the captain position when your captain is off.
> 3. Many of our officers, acting officers, and employees refuse to work with you because they do not want to deal with your obstinance and lack of concern for safety.
> 4. You require a disproportionate management burden and, as a result, limit the time available to your captain to focus on newer and less-experienced employees or other responsibilities; and
> 5. You are setting a bad example to new firefighters who were taught in the fire academy to respect officers, follow orders, and not to argue policies, principles, or orders during their duty.

Exhibit 6, p.2.

Again, no details are set forth with regard to any of these assertions. When asked to give specific answers to questions about the meaning of some of the conclusions, Chief Stone, who signed the Letter, indicated that he didn't have the answers. For example, when asked to explain the assertion that "many of our officers, acting officers, and

employees refuse to work with you," Chief Stone said that "I've been told by Chief Stewart and Deputy Chief Powers that that is the case." Pressed, he came up with one name; Spencer Gregory, whose name does not appear in the Letter and whose identity was revealed for the first time in the appeal hearing.

When asked to give specifics as to what he meant by saying in the Letter that Gary "require[s] a disproportionate management burden," Chief Stone said that he was referring to Paramedic Shafto's note in Trakstar that said that Gary was a "management drain," which the Chief had already conceded was an expression of opinion (and that he did not discipline people based on the opinions of others). Transcript, pp. 119-120.

When asked "if you're going to fire a guy for 18 years of mismanagement, wouldn't it make sense that you would tell him who the people are over those 18 years that have made this opinion of yours, this conclusion, valid?" Chief Stone replied simply "I didn't put it in the letter, no." Asked further if he could tell us now, the Chief replied, "Not right offhand, no." Transcript, p. 121. This list goes on and on.

Chief Stone admitted that he disciplined Gary for future violations of policy.

The Letter of Termination states that "You are putting yourself and your crew in harm's way by not following safety practices and policies." Chief Stone admitted, however, that his concerns about safety, both to the Department personnel and to the public, were not based on Gary's past actions. Those actions could have all been expunged if Gary had "taken responsibility," as discussed below. Instead, the Chief disciplined Gary because of risks in the future, "prospectively."[32]

The real reason behind the termination was Gary's demeanor at the Pre-Disciplinary Hearing:

Despite the fact that Chief Stone admitted that it is not proper to discipline someone based on their demeanor, he conceded that *"[t]he determination to fire Gary*

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[32] Q. So, you've got that over here, all of the actions but no responsibility. On the other hand, you [have] all of these actions, but if he'd have taken responsibility, he'd have kept his job. So the differences is him taking responsibility and not the actions that you claim put the public at risk. Isn't that true?
A. No.
Q. It's not?
A. My – my thought process for that is that had he taken responsibility for those actions, that his behavior would have changed; thus, that the safety and the risk would have changed. He did not take responsibility for any of these, so the actions were going to continue. They have continued since 2006.
Q. But the actions that you list here that put the public at risk, those are what they are, correct? I mean, there's nothing you can do to change those. If they put the public at risk –
A. I personally can't change them, no.
Q. So, if they put the public at risk without taking responsibility, they would have put the public at risk had he taken responsibility?
A. Because I feel like he would have changed his behavior –
Q. I see.
A. — if he took responsibility.
Q. So you're looking prospectively as opposed to retrospectively?
A. Correct.
Transcript, pp. 123-124,

was his demeanor at the pre-disciplinary hearing. He did not – for me, he did not take any responsibility for any of his actions. And then I looked at the amount of discipline that he has had over the years since 2006, and the behavior has not changed with all the discipline that has happened to Mr. Schvaneveldt." Transcript, pp. 34-35 (emphasis added).

The Chief went on to say that if Gary had simply "taken responsibility" for his past actions, he would not have been terminated. The Fire Chief was asked, "What would have satisfied you with regard to evidencing a willingness to change that would have saved his job?" He replied, "Had Mr. Schvaneveldt taken responsibility or even some sort of responsibility to what he has done; but instead, he did not." Transcript, p. 114. He then admitted that if Gary had "accepted the responsibility," the Chief would have saved Gary's job. Chief Stone was asked, "So it all got down to ultimately, even with all of the things that you have alleged against him, even if all of them were true, if he had had a different attitude, accepted responsibility, you would have kept him on?" He answered "Yeah, I believe so."[33]

When asked specifically what Gary might have said that would have shown him accepting responsibility, Chief Stone indicated that if Gary had said in the pre-disciplinary hearing that things were rough at home, and that he and Paramedic Shafto weren't getting along very well, that it was true that lately he hadn't done his truck checks on time, that those were things that Gary was struggling with, and that he would promise that "you won't hear another peep from me in the next – whatever, how much time he had left, and I'd just appreciate if you'd consider that," Gary would still be employed by the Department.[34]

The reason Gary was fired, then, was not necessarily due to the actions asserted in the seven Allegations (and numerous sub-allegations), or even for the new items listed for

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[33]Q. Had he accepted the responsibility, you would have saved his job?
A. I definitely would have taken that into consideration.
Q. Well, I don't care what you would have taken into consideration. Would you have saved his job?
A. Yes.
Q. So it all got down to ultimately, even with all of the things that you have alleged against him, even if all of them were true, if he had had a different attitude, accepted responsibility, you would have kept him on?
A. Yeah, I believe so.
Transcript, p. 115.

[34] Q. Tell me what it is that you mean by accepting responsibility. If he had said, "Yeah, I did all that stuff, I'm really sorry for it, please, let's work this out," would that have been accepting responsibility?
A. I don't want to put words into Gary's mouth. But had he said, hey, I wasn't – you know, obviously me and Shafto weren't getting along very well, but yeah, I did do those things, I haven't done my truck checks lately on time, those are all things I'm struggling with right now, but I promise you that you won't hear another peep from me in the next – whatever, how much time he had left, and I'd just appreciate if you'd consider that.
Q. And that would have saved his job?
A. It would definitely change my thought process.
Q. I'm not interested in your though process, I'm interested in whether he would still have a job today if he had done that.
A. I can't say that for sure. I'll tell you this, yes. I've already said yes.
Transcript, pp. 115-116.

the first time in the Letter of Termination, but was instead due to his "attitude," his failure to beg forgiveness, and his failure to promise not to make another "peep" until he was gone from the Department.

It is needless to say that it is not proper to discipline someone for offenses they have not yet committed. It also goes without saying that one's "demeanor" or "attitude" does not stand as an adequate basis for termination. It should be pointed out, however, that the Notice of Pre-Disciplinary Hearing contains no Allegations regarding "future infractions" as a basis for discipline. The Notice is also bereft of anything regarding discipline or termination for "demeanor," "attitude," or a refusal to "take responsibility" to the Chief's satisfaction. The Notice contains no advisement to the effect of "If you will just 'take responsibility'; tell the Chief of your difficulties at home; of your personality conflicts with Paramedic Shafto; explain that you have been "struggling"; and then promise that the Chief won't hear a peep from you until you retire, you'll still have a job with the Department." If it had, we would have a different case here. And yet, as Chief Stone admitted, had Gary met these unwritten, unspoken (and non-noticed) requirements, his job would have been saved.

Obviously, then, not only did the Department fail to give Gary advance notice of the real facts and reasons upon which Chief Stone would (and did) rely in deciding to fire him, but it also failed to acknowledge them in the Letter of Termination. It was only in the appeal hearing that the true reason for Gary's termination came out.

Conclusion

The Department violated its own policies, denied Gary Schvaneveldt due process before his Pre-Disciplinary Hearing, and then fired him for illegitimate reasons that he was never confronted with, and which he was never asked to respond to. His termination should be overturned.

Sincerely,

RANDALL K. EDWARDS

/s/ Randall K. Edwards
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SOUTH DAVIS METRO FIRE SERVICE AREA

Regarding the Disciplinary Action of Gary Schvaneveldt.	**DEPARTMENT'S CLOSING STATEMENT** Hearing Officer Richard Catten

The South Davis Metro Fire Service Area (the "department") hereby submits its closing argument in this above captioned matter.

Based on the evidence provided during the lengthy hearing on this matter, it is clear that Mr. Schvaneveldt, over the course of his many years of employment, failed to follow Department policy regularly, and failed to follow specific direction from his Supervisors. His conduct over an extended period of time justifies his termination.

Legal Standard

The established standard of review to be applied in this matter is a "substantial evidence" standard for factual determinations, and an abuse of discretion standard with respect to the discipline that is selected. *Taylorsville City v. Taylorsville Employee Appeal Board*, 2013 UT App 69, 298 P.3d 1270. The Department submits that the evidence presented more than meets the required burden. The employee offered some excuses for the conduct, but the conduct at issue was not credibly disputed. The testimonial evidence supported each of the allegations in the January 5, 2021 Notice of Pre-Disciplinary Hearing.

Proof of the Alleged Conduct

The first incident noted in the Pre-Disciplinary letter, the failure to properly report sick leave, was proven in the testimony of Chief Moss. In addition to clear testimony establishing the violation, Chief Moss provided significant background on the long term difficulty of Mr. Schvaneveldt.

Captain Maxwell of the Department established the second set of violations which occurred on December 4, 2020. Those violations of policy included an insubordinate refusal to wear a mask throughout the day, the failure to don the proper uniform and the failure to timely perform the required engine checks. All of these matters relate to safety rules. The failure to wear a mask as required by the Department's directive was observed when there were visitors in the station and Mr. Schvaneveldt was engaged in conversation with them without a mask. Captain Maxwell told Mr. Schvaneveldt on more than one occasion throughout the day to wear a mask and he refused.

The third violation in the letter deals with the repeated failure to perform engine checks as required by the Department. Testimony established that these checks are vital to assure that the Department equipment is ready to function for any emergency that may occur throughout the day. While Mr. Schvaneveldt and Paramedic Shafto provided testimony regarding a computer malfunction that affected the log some of the time, there was no evidence provided that the checks were actually completed, just that on some of the occasions, the computed malfunction prevented the checks from being logged. In addition, there is no dispute regarding the failure to complete and log engine checks on a significant number of occasions.

Testimony from Paramedic Shafto, Captain Maxwell and Captain Sayre supported the allegation of the fourth alleged category of violation in the letter regarding the failure to wear a

proper uniform, and the fifth allegation of the Pre-Disciplinary letter was also supported by the testimony that was elicited by Mr. Schvaneveldt's attorney.

The fifth and sixth violations of the letter were addressed in the testimony provided by Paramedic Shafto on the failure to wear the required Personal Protective Equipment on a call, and by Captain Maxwell on the failure to wear a mask, which testimony was duplicative of the violations that occurred on December 4, 2020.

Finally, Paramedic Shafto's testimony clearly proved that Mr. Schvaneveldt was not only sleeping during a training by an outside agency on October 23, 2020, but that he had put a recliner in a full recline position, demonstrating a complete lack of concern or care for the training and with intent.

All of these violations were clearly established by the evidence. Counsel for Mr. Schvaneveldt attempted on several occasions to make the point that the recording of these incidents did not meet with his approval, but the conduct was clearly established and was not credibly disputed. The Department clearly met its burden of establishing the conduct by substantial evidence.

Termination was Appropriate

The legal standard of review on this question is an abuse of discretion standard. It is clear from the evidence that Chief Stone was warranted in making the decision to terminate Mr. Schvaneveldt, and that his decision was not an abuse of his discretion.

Counsel for Mr. Schvaneveldt, in his questioning, authenticated the list of previous corrective action for his client, which is found at page 19 of Exhibit 1. The list details ten separate incidents requiring previous corrective action from 2006 to the present, and exclusive of any of the conduct represented in the pre-disciplinary letter. The department's employees,

including Chief Stone, noted that no other employee has a disciplinary record as extensive as Mr. Schvaneveldt. Chief Stone's testimony noted his thought and consideration on the issue of appropriate discipline. Given the repeating nature of the policy violations and the general lack of improvement in conduct, the Chief reached the decision that termination was appropriate.

Counsel for Mr. Schvaneveldt attempts to argue that the Chief made his decision to terminate the employee solely based on his attitude at the Pre-Disciplinary Hearing. That argument is a gross mischaracterization of the testimony. The Chief's testimony clearly established a basis for termination that was based on recent conduct, an employment history with numerous similar violations, compounded by an attitude that did not indicate a willingness to comply with Department practices or policies.

In addition, the Chief's consideration of Mr. Schvaneveldt's attitude was appropriate and important. The Chief testified that Mr. Schvaneveldt's attitude at the hearing was a reflection of the conduct that appeared in the Pre-Disciplinary Hearing Notice. His attitude, to some extent, corroborated the behavior noted in Notice. It also suggested to the Chief that Mr. Schvaneveldt's behavior was not likely to change. Against this entire background, termination was not only an appropriate action, it was the only action supported by all the circumstances.

The Department Provided Due Process

Counsel for Mr. Schvaneveldt has submitted a lengthy argument which addresses several matters, but excludes any meaningful argument regarding the actual conduct of his client. The procedural arguments he makes are offered with no legal analysis or support.

The argument presented by Mr. Schvaneveldt urges that the District did not follow its policies because it did not complete "an investigation" into the conduct detailed in the pre-disciplinary letter. He then makes the bare assertion, without legal support, that the Department's

termination process violated the procedural due process right of his client. Mr. Schvaneveldt's argument requires that a Supervisor who witnesses a policy violation or other offending behavior contact another officer with supervisory authority to "investigate" the conduct that the direct supervisor witnessed. This argument is illogical. Certainly due process does not require a needless and pointless process. The Department's policies require an investigation of alleged employee misconduct in those certain circumstances where misconduct is alleged to have occurred, but has not been witnessed by a department officer with supervisory, and thus, disciplinary authority. The Department complied with its policies.

Even if a determination were made that the Department failed to follow its policies, that finding would not invalidate Mr. Schvaneveldt's termination. In *Brown v. Youth Center at Topeka*, 883 F. Supp 572, the District Court for the District of Kansas held that a Defendant's failure to follow established policy and procedure does not necessarily violate an employee's right to procedural due process. An employee's due process rights are established by constitutional standards, not policies and procedures of local entities. In explaining those rights, the Court cited Supreme Court caselaw and noted:

> *Loudermill* requires that a public employer give a tenured employee some form of hearing prior to termination; however, a full evidentiary hearing is unnecessary. *Id.* at 545, 105 S.Ct. at 1495. The pretermination hearing need neither be elaborate nor definitively resolve the propriety of the discharge. *Id.* at 545, 105 S.Ct. at 1495. Instead, "[i]t should be an initial check against mistaken decisions—essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Id.* at 545–46, 105 S.Ct. at 1495. Therefore, prior to discharge, a tenured public employee need receive only "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. [Citation omitted]. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee." *Id.* at 546, 105 S.Ct. at 1495.

The Court then clarified the entirety of the constitutional process that is required by citing a Tenth Circuit decision, *Powell v. Mikulecky*, 891 F.2d 1454 (10th Cir. 1989), stating:

> [t]he pretermination hearing is merely the employee's chance to clarify the most basic misunderstandings or to convince the employer that termination is unwarranted. The pretermination hearing is intended to supplement, not duplicate, the more elaborate post-termination hearing. Because the post-termination hearing is where the ***580** definitive fact-finding occurs, there is an obvious need for more formal due process protections at that point. To duplicate those protections at the pretermination stage would cause unnecessary delay and expense while diffusing the responsibility for the ultimate decision to terminate an employee. The idea of conducting two identical hearings runs counter to traditional principles of adjudication.
>
> *Brown* at 579.

This decision makes clear that the pre-disciplinary notice provided to Mr. Schvaneveldt and the full hearing afforded to him before this Hearing Officer provided all the necessary due process protections to validate the termination.

Conclusion

For all the foregoing reasons, the Department submits that the termination of Mr. Schvaneveldt must be sustained and requests that the Hearing Officer enter an appropriate decision.

DATED this 21st day of May, 2021.

/s/ Todd J. Godfrey
Attorney for South Davis Metro Fire Service Area

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of May, 2021, I caused a true and correct copy of the DEPARTMENT'S CLOSING STATEMENT to be submitted to Hearing Officer Richard Catten, and I sent a copy via electronic mail to:

Randall K. Edwards
70 North Main Street, Suite 105
Bountiful, Utah 84010

randall@randallkedwards.com
Attorney for Appellant

/s/ Logan Ginos

SOUTH DAVIS METRO FIRE SERVICE AREA

GARY SCHVANEVELDT Appellant **vs.** **SOUTH DAVIS METRO FIRE** Appellee	)))))))))	**DECISION ON APPEAL** Administrative Law Judge J. Richard Catten

This case is an appeal from an employment termination. Following an evidentiary hearing was held April 21, 2021. The Appellee, Gary Schvaneveldt ("Schvaneveldt"), was represented by Randall K. Edwards of Randall K. Edwards PLLC. South Davis Metro Fire ("South Davis") was represented by Todd Godfrey of Hayes Godfrey Bell, PC.

The proceedings were recorded both electronically and by court reporter. The Administrative Law Judge, being fully advised in the premises, and based upon the pleadings, testimony, exhibits, and arguments presented by the parties NOW MAKES AND ENTERS THE FOLLOWING:

FINDINGS OF FACT

1. Schvaneveldt was firefighter/paramedic who worked for South Davis for approximately 23 years total, 18.9 years full time. (Testimony of Schvaneveldt).

2. Over the course of his employment with South Davis, Schvaneveldt was disciplined for various behavior many times, including a suspension and a demotion. (Testimony of Chief Stone; Testimony of Schvaneveldt; Appellant Exhibit #1 Attachment E)

3. On January 5, 2021, Schvaneveldt was served with a Pre-Disciplinary Hearing Notice that outlined various alleged acts, occurring between July 17, 2020 and December 20, 2020, that could result in discipline. The Pre-Disciplinary Hearing Notice put Schvaneveldt on notice that the hearing could result in discipline including suspension for more than two days without pay, demotion, or termination. (Appellant Exhibit #1).

4. The Pre-Disciplinary Notice put Schvaneveldt on notice that his prior disciplinary history would be considered by South Davis. A list of previous disciplinary actions was attached as an exhibit to the Pre-Disciplinary Notice. (Appellant Exhibit #1, Attachment E).

5. South Davis Policy 1017.6 requires the consideration of an employee's past history with the department in determining appropriate corrective action in disciplinary cases. (Appellant Exhibit #3).

6. The Pre-Disciplinary Notice placed Schvaneveldt on administrative leave and provided him with 9 days to prepare a response to the allegations. The Hearing was set for January 14, 2021, at the Fire Chief's office. (Appellant Exhibit #1).

7. At the Pre-Disciplinary Hearing, Schvaneveldt was present and was represented by legal counsel. He provided little defense to the accuracy of the policy violation allegations, but rather offered excuses for the behavior. The Fire Chief found him to be largely disinterested in the process or in providing a direct response to the allegations. (Testimony of Chief Stone; Appellant Exhibit #6).

8. The Pre-Disciplinary Hearing Notice sets out 7 general categories of actions or behaviors that violated South Davis policies. These include:

a. Reporting for Duty – Policy 1010.8, Members should notify their Captain and Battalion Chief at his/her duty assignment location as soon as practical of any inability to report for duty at the time required;

b. Insubordination Major;

c. Improper Performance of Assigned Duties Minor;

d. Reporting for Duty, Policy 1010.06, All members should don the appropriate uniform prior to the start of their work assignments and be properly attired at all times when representing the Department;

e. Violation of Personal Protective Equipment policy;

f. Violation of Covid-19 State Public Health Order.

Within each of these general headings, specific instances of policy, safety or state health order violations are listed, including dates and brief explanations. Altogether, 25 separate violations are listed. (Appellant Exhibit #1).

9. Of the 25 separate violations listed in the Pre-Disciplinary Hearing Notice, there is substantial evidence, and/or Schvaneveldt admits or did not contest the conduct, for the following specific violations:

> a. December 15, 2020, Schvaneveldt stated to his captain and crew that he would call in sick if Captain Carlsen was the call back captain. On December 20, 2020, he placed himself on sick leave without properly notifying the battalion chief as required by policy. (Testimony of Battalion Chief Moss – Transcript p. 75-76; Testimony of Schvaneveldt – Transcript p. 310; Appellant Exhibit #1, Attachment B).
>
> b. December 4, 2020 Schvaneveldt was out of the proper Department uniform and failed to comply when told to by his captain. (Testimony of Capt. Maxwell – Transcript p. 260-264; Testimony of Schvaneveldt – Transcript p. 291)
>
> c. December 4, 2020, Schvaneveldt was told to wear proper

face mask and he failed to comply – insubordination. (Testimony of Capt. Maxwell – Transcript p. 267; Exhibit 1, Attachment C).

d. December 4, 2020, Schvaneveldt was asked to do an engine check by his captain and failed to comply in a timely manner. (Testimony of Capt. Maxwell – Transcript p. 264).

e. November 4, 2020, Schvaneveldt had to be reminded by Captain Kettle to do his Day 2 engine checks. (Testimony of Capt. Kettle – Transcript p. 72; Testimony of Schevaneveldt - Transcript p. 282)

f. October 18, 2020, Schvaneveldt did not log his Day 2 engine checks in a timely manner with repeated reminders from his captain, culminating in a call from the battalion chief. (Testimony of Shafto – Transcript p. 235; Testimony of Schvaneveldt – Transcript p. 284; Appellant Exhibit #1, Attachment C).

g. October 12, 2020, Schvaneveldt did not complete his Day 2 engine checks. (Testimony of Shafto – Transcript p. 235; Testimony of Schvaneveldt p. 284; Appellant Exhibit #1, Attachment C).

h. September 5, 2020, it was noted that Schvaneveldt was late on completing his training for the month of August. (Appellant Exhibit #1, Attachment C; Testimony of Schvaneveldt- Transcript p. 288)

i. August 30, 2020, Schvaneveldt did not complete his Day 2 Engine checks. (Appellant Exhibit #1, Attachment C).

j. August 29, 2020, Schvaneveldt was asked by his captain five times to log his daily checks. This was not completed until that evening at 2230. (Appellant Exhibit #1, Attachment C).

k. July 19, 2020, Schvaneveldt was late in logging vehicle checks. (Appellant Exhibit #1, Attachment C; Testimony of Schvaneveldt – Transcript p. 290-291)

l. July 18, 2020, Schvaneveldt was late in logging vehicle checks. (Appellant Exhibit #1, Attachment C)

m. December 4, 2020, Schvaneveldt was out of proper uniform at the daily briefing and had to be asked to don his proper uniform. (Appellant Exhibit #1, Attachment C; Testimony of Capt. Maxwell – Transcript p. 260, 264).

n. December 4, 2020, Schvaneveldt was out of his proper uniform and had to be told by his captain to don the proper uniform. (Appellant Exhibit #1, Attachment C; Testimony of Capt. Maxwell – Transcript p. 260).

o. November 28, 2020, Schvaneveldt was out of uniform and wearing shorts at 1220 hours after having been told by his captain to don proper uniform at 0800 and again at 1130. (Testimony of Shafto – Transcript p. 236; Appellant Exhibit #1, Attachment C)

p. October 11, 2020, Schvaneveldt was out of proper uniform on a medical call and was reminded by his captain to comply with the uniform policy. (Testimony of Shafto – Transcript p. 235; Appellant Exhibit #1, Attachment C).

q. September 22, 2020, Schvaneveldt was out of proper uniform on two separate occasions and his captain had to remind him to don the proper uniform. (Testimony of Shafto – Transcript p. 235; Appellant Exhibit #1, Attachment C)

r. October 29, 2020, Schvaneveldt arrived at a gas leak without property protective equipment (turnouts). When asked by his captain to put on the appropriate gear, he came back to the scene with only half of his ensemble stating it was too hot. (Appellant Exhibit #1, Attachment C; Testimony of Shafto – Transcript p. 236; Testimony of Schvaneveldt – Transcript p. 292-294.

s. December 4, 2020, Schvaneveldt's continuing failure to wear a mandated facemask throughout the shift potentially exposed his crew and construction visitors to the SARS Covid-19 virus. Public Health Order violation. (Testimony of Capt. Maxwell – Transcript p. 261-262; Appellant Exhibit #1, Attachment C).

t. October 23, 2020, Schvaneveldt was fully reclined and sleeping during training by an outside agency. When awakened, he did not change his behavior, but rather went back to sleep. (Appellant Exhibit #1, Attachment C; Testimony of Shafto – p. 235 – 236).

x. September 29, 2020, Schvaneveldt was not out of bed until 0730. (Appellant Exhibit 1, Attachment C; Testimony of Schvaneveldt – Transcript p. 283).

y. August 30, 2020, Schaneveldt stayied in his bedroom until

0950. (Appellant Exhibit #1, Attachment C).

10. There is no credible evidence that South Davis singled out Schvaneveldt or treated Schvaneveldt differently that it would treat any employee with a similar disciplinary history. South Davis has no employee with a disciplinary history as extensive as Schveneveldt. (Testimony of Chief Stone).

11. The Pre-Disciplinary Hearing took place on January 14, 2021 and Schvaneveldt was represented at the hearing by counsel.

12. The South Davis Fire Chief considered the information provided by Schvaneveldt at the Pre-Disciplinary Hearing and on January 26, 2021 issued a Notice of Termination to Schvaneveldt. (Testimony of Chief Stone).

13. The Notice of Termination states that the basis of the decision to terminate Schvaneveldt is "your numerous, repeated violations of policies, procedures, and rules that are documented in the January 5, 2021, Notice of Pre-Disciplinary Hearing." (Appellant Exhibit #6).

14. The Termination Notice also provides the Chiefs rationale in making the decision to terminate Schvaneveldt's employment. This included "(1) neither you or your attorney disputed your behavior; (2) your negative behavior persisted over years of service and under multiple supervisors; (3) your behavior and attitude belie a general disregard for personal or public safety; and (4) you offered justifications for your behavior but did not express a willingness to change." (Appellant Exhibit #6; Testimony of Chief Stone).

C

CONCLUSIONS OF LAW

The following Conclusions of Law are based on the testimony, exhibits, and evidence presented at the hearing, the arguments and pleadings of the parties, and relevant law:

1. The burden of proof in this appeal is on the South Davis and the standard of proof required is "substantial evidence." A decision is supported by substantial evidence if there is a "quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion," *Becker v. Sunset City*, 309 P.3d 223, 741 Utah Adv. Rep. 5 (Utah 2013)
2. The South Davis has proven that its termination of Schvaneveldt's employment with the South Davis is supported by substantial evidence.
3. Schvaneveldt had adequate notice of the allegations made against him and had ample opportunity to respond to those allegations in both his Pre-Disciplinary Hearing and this appeal. Schvaneveldt has been provided due process throughout the course of the notice, termination and this appeal.

ANALYSIS

The factual evidence is this case is clear. Simply put, there is substantial evidence that Schvaneveldt committed virtually all of the acts constituting policy violations that are alleged by South Davis. Indeed, he admits or does not contest many of them. Since he cannot avoid his actions, he instead provides excuses and rationales to explain his repeated failure to follow South Davis policies.

For example, several of the violations set forth in Finding of Fact 9 above are related to his failure to timely check the fire engine and its equipment each morning. In his defense, he points to an issue with the computer system that was used to log the checks. He states that since he was assigned to a reserve engine, the Day 1 and Day 2 check screens for the reserve engine were mixed up in the computer program and that this prevented him from logging his checks. However, he provides no evidence to support this excuse, nor does it make sense considering some of the allegations. Despite his assertion that this computer programing issue would be "easy to check," he provides no independent facts which substantiate his testimony and did not question the various South Davis witnesses regarding this computer issue. There is also a question as to when the reserve engine was in use. First, he testified that the reserve engine was only in use in November and December and then later testified that he believed it was in use from August until December. In either case, the evidence shows that he did eventually perform and log the checks in most cases. Clearly he was capable of completing and logging the checks despite any computer issue. The crux of the allegation is that he did not do the checks in a timely manner or that he only did them after repeated reminders from his superior officers. He essentially offers no defense to that aspect of the allegations, and in some cases admits the allegations.

A second example is the common allegation that he is repeatedly out of uniform. His typical response to some of these allegations relating to personal protective clothing is that while he may not have all of his gear on, he has it nearby. For instance, rather than wearing some of the uniform in the station, he places it on the steering wheel of the engine. In his rationale, it is easily accessible so there is no problem – despite the South

Davis policies regarding the clothing and equipment. However, that misses the point of the policies. Fire departments are operated in a paramilitary fashion and compliance with policies are particularly important. An immediate and organized response to an emergency seems to be an obvious goal of any fire department. If departments simply let their individual employees each chose how they want to prepare for emergency action, it isn't hard to imagine a slower and more chaotic response to the emergency. In this case, it seems to boil down to Schvaneveldt was more comfortable not wearing the appropriate uniform or gear as required by South Davis policies, and instead had devised what he believed was a better plan. Despite being reminded and written up by his supervisors, he continued to violate the policies.

A more specific example is Schvaneveldt's response to the allegation that he was not wearing the appropriate safety gear during a response to a reported gas leak (Finding of Fact 9(r). In that case, he arrived on the scene not wearing the appropriate safety gear for the situation. He had left the gear in the engine. After having been told to don the appropriate gear by the supervising Captain, he went back to the engine and put on only a portion of the gear before returning to the scene. After again being told to dress appropriately by the Captain, he refused stating that it "was too hot." His excuse for this violation of policy is that he was aware that the gas lines in the area had been removed for construction and he did not believe that there was a gas leak. Schvaneveldt simply determined what action he thought worked best for him, rather than follow the policies of South Davis and arrive on scene in appropriate gear.

It should be noted that an overriding theme through the various policy violations is Schvaneveldt's consistent refusal to accept orders from his superior officers. Rather

than comply with a policy or even a direct order to perform a task or don a mask, his response was often to either ignore or refuse to follow the policy or order. The best example of this type of conduct is outlined in a written reprimand that he received in November 2020. The reprimand was written by Captain Maxwell who testified that at about 7:20 in the morning at the beginning of the shift he spoke to the crew and stressed the importance to wear masks in accordance with the directive issued by South Davis. Later in the day, Maxwell observed Schvaneveldt and another firefighter together. The other firefighter was wearing a mask and Schvaneveldt was not. Maxwell asked Schvaneveldt to don a mask and his responded that he couldn't and he wouldn't. As the conversation continued, Maxwell told him that he would have to write a note and begin corrective action. Schvaneveldt's response was "If you've got to make the note, then make the note." Although Schvaneveldt now claims that he needed a larger mask than South Davis had provided, Maxwell testified that "At no point did he ask me for an alternative." (Testimony of Maxwell, Transcript pages 260-263). Also, in his testimony Maxwell described why he believed Schvaneveldt to be insubordinate when he testified that Schvaneveldt's "voice was raised and he was directly resisting an order to follow a directive of the department." (Testimony of Maxwell – Transcript p. 267).

The facts are very clear and the evidence substantial that Schvaneveldt showed a consistence disregard for both policies and orders and to a large extent simply did his job in the way, and on the schedule, that he deemed most appropriate – regardless of his fellow employees, the relevant policies, or the overall command structure of South Davis. As a result, he obviously accumulated an impressive number of policy violations.

Since he has little evidence to contest the facts, Schvaneveldt has instead chosen to attack the disciplinary/termination process used by South Davis. He alleges that South Davis failed to provide him with adequate notice of his policy violations, is improperly considering prior discipline in its termination decision, was "out to get him," and is depriving him of due process. Each of these arguments clearly fails.

First, is his contention that he did not receive adequate notice of the allegations and potential disciplinary action being taken against him. This argument flies in the face of the facts presented at the hearing. Those facts include:

- South Davis operates a computer-based system called Trakstar. This is a system where supervisors and employees can make notes regarding various personnel issues or actions. Almost all of the allegations made by supervisors against Schvaneveldt first appeared as notes in the Trakstar program. Schvaneveldt had access to all of the allegations and issues as they were posted to the TrakStar system. From the testimony, it appears that he simply failed to take advantage of this access to view the accumulating allegations. (The relevant Trakstar notes were entered into evidence as Attachment C to Appellant Exhibit #1).
- Schvaneveldt was warned by his Captain in November 2020 that he was racking up numerous policy violations and that "he was on thin ice." (Tesitmony of Capt. Sayre – Transcript p. 251).
- During December 2020 and January 2021, Schvaneveldt was taking photographs with his phone of other South Davis employees that he believed to be in violation of policies. He did this with the intent to show

that other employees violated some of the same polices that he was violating. Hardly the actions of an employee who does not think that his employment is in jeopardy. (Appellant Exhibit #23).

- The Notice of Pre-Disciplinary Hearing provided Schvaneveldt with a comprehensive list of both the general categories of the allegations and 25, date specific, instances of policy violations he was alleged to have committed. (Appellant Exhibit #1).
- The Notice of Pre-Disciplinary Hearing and South Davis Policy 1017.6 both put him on notice that his prior disciplinary history would also be a consideration in what, if any, disciplinary action South Davis may consider. A list of previous disciplinary actions was attached to the Notice as Exhibit E. (Appellant Exhibits #1 and #3)
- The date set for the Pre-Disciplinary Hearing was 9 days after he was serviced with the Notice and placed on administrative leave. (Appellant Exhibit #1). Schvaneveldt had ample time to ask South Davis for clarification of any allegation or policy if he was confused by the Notice. He did not do so. (Testimony of Deputy Chief Powers).
- At the appeal hearing, Schvaneveldt called 12 witnesses (including himself) and was free to present evidence and arguments in support of his case.
- The appeal hearing was held, and this decision is written, by an independent Administrative Law Judge with no prior connection to South Davis, Schvaneveldt or any other party or witness in this case.

Clearly, South Davis made no attempt to hide the policy violations committed by Schvaneveldt and also stated them very clearly in the Notice. He was aware that he was being written up for his actions but failed to check TrakStar to discover any details. He was also taking photographs of other employees to prepare a defense to his violations. His argument that he was blindsided by the allegations in the Notice is completely without merit.

Along the same lines, Schvaneveldt argues that it was inappropriate for South Davis to consider his prior disciplinary history in making a decision to terminate his employment. At the appeal hearing he moved to exclude his entire personnel file from consideration or submission into evidence. The Motion was denied as to the submission of prior discipline. No items from his personnel file were submitted as evidence by South Davis.

This argument is also completely without merit. Common sense, the law, and South Davis policies all allow or require the consideration of prior discipline in making human resource decisions. The very concept of "progressive discipline," which is commonly used in this country, is that an employee is punished more severely if his or her conduct does not change, and they continue to get in trouble.[1] If Schvaneveldt's argument that previous discipline cannot be considered were implemented, consider the consequences. An employee could, for example, repeatedly commit an offense that carries a suspension as the penalty. Essentially, as soon as the employee serves the suspension they could recommit the offense and the only penalty would be a new suspension. That could go on endlessly, unless the employer can consider the prior

[1] It should be noted that Schvaneveldt has progressed through the lower levels of progressive discipline as he has previous been suspended and demoted by South Davis.

conduct and move to terminate the employee. His contention simply makes no sense and Schvaneveldt offers no authority to support the argument.

A final part of this "prior discipline" argument is that Schvaneveldt was unable to dispute the prior discipline at the Pre-Disciplinary Hearing. Schvaneveldt perceives this as unfair, but it is not. As found in most disciplinary systems, South Davis has a grievance procedure that allows an employee to contest a disciplinary matter. The grievance must be filed within specific time periods. In this case, none of the prior discipline was contested by Schvaneveldt at the time it was imposed. (Testimony of Deputy Chief Powers). At this point of the process, those prior disciplines are facts, they are not allegations which are subject to challenge or discussion.

Finally, is Schvaneveldt's contention that his due process rights have been violated by South Davis in how it conducted the disciplinary process. Although he contends that his rights have been violated in numerous ways, he provides no legal authority for those contentions, except for a passing reference to *Loudermill v. Cleveland*, 470 U.S. 532 (1985) and *Goldberg v. Kelly*, 397 U.S. 254 (1970). [2]

In addition to applicable Supreme Court cases, Utah has extensive caselaw establishing the parameters for a due process violation in the discipline of a government employee. A close examination of those cases and the facts of this case lead to the clear conclusion that no due process violation has occurred.

As a threshold requirement, the *Loudermill* case establishes that Schvaneveldt is entitled to notice and an opportunity to respond. As the Court stated:

> The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond.

[2] Schvaneveldt's reference to *Goldberg v. Kelly* is misplaced. The *Loudermill* Court specifically distinguished Kelly as not representative of the process in an employment case. *Loudermill*, at page 545.

> The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. See Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. See Arnett v. Kennedy, 416 U.S., at 170-171, 94 S.Ct., at 1652-1653 (opinion of POWELL, J.); id., at 195-196, 94 S.Ct., at 1664-1665 (opinion of WHITE, J.); see also Goss v. Lopez, 419 U.S., at 581, 95 S.Ct., at 740. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.
>
> *Loudermill v. Cleveland Board of Education*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)

The Court also stated that the pre-disciplinary hearing need not be "elaborate" and that a full evidentiary hearing is not needed. *Loudermill*, at p. 545. See also *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976); and *Lucas v. Murray City Civil Service Commission*, 949 P.2d 746 (Utah App. 1997).

In this case, Schvaneveldt received a very detailed Pre-Disciplinary Hearing Notice. The Notice outlined specific dates of violations, the nature of each violation, the policy being violated, and in many cases where that particular violation falls on the South Davis disciplinary matrix.

Furthermore, there is evidence that Schvaneveldt had free access to the Trakstar system and could have received notice of allegations in real time – had he looked. In addition, he had 9 days between receipt of the Notice and the Pre-Disciplinary Hearing with the chief. That appears to be ample time to prepare for the informal hearing. There is no evidence that Schvaneveldt asked for any additional clarification or information regarding the hearing or that he asked for a delay. Any arguments or contentions that he was not aware of the allegations or not able to prepare to discuss them are not based on

the facts. Clearly there was no procedural due process violation related to the adequacy of the Pre-Disciplinary Hearing Notice or the Pre-Disciplinary Hearing itself.

There is also no violation with respect to the Termination Notice issued by the Fire Chief. In that Notice and in his testimony, Chief Stone ties the basis for the decision to terminate to the numerous and repeated policy violations set out in the Pre-Disciplinary Notice and Schvaneveldt's failure to change his behavior despite his extensive disciplinary history.[3] (Appellant Exhibit #6; Testimony of Chief Stone).

There is no post termination violation of Schvaneveldt's procedural due process rights. He was accorded a full evidentiary appeal before an independent hearing officer. He called 12 witnesses, submitted numerous exhibits and provided both a pre and post hearing memorandum.

The final two points to consider are (1) Schvaneveldt's arguments that South Davis did not accurately follow its own policies when it documented his violations, more specifically that they did not perform an "investigation" prior to alleging the violations and holding the Pre-Disciplinary Hearing; and (2) were Schvaneveldt's substantive due process rights violated because he was "targeted" or the process was inherently unfair.

The first argument is governed by Utah caselaw. The Utah Court of Appeals has made it clear that an agency's failure to follow technical provisions of its policies in working through a disciplinary process are not substantive, unless the affected employee can show how he was specifically harmed by the failure. In the *Lucas* case cited above, the Court stated:

> Although the record shows the Department failed to strictly comply with its procedure, the fundamental requirements of due process were met.

[3] It should be noted that the Pre-Disciplinary Notice put Schavaneveldt on notice that his prior disciplinary history would be considered in making a disciplinary decision.

> Lucas did not receive written notice of either allegations of excessive force or dishonesty; however the record shows that Lucas did in fact have notice of the pending charges and was able to respond to the charges before the termination was implemented.
>
> *Lucas,* at p.754.

The Court also stated:

> Furthermore, Lucas fails to establish how these procedural errors were harmful, e.g., he did not have time to prepare for the hearing or, how these procedures would have resulted in a different outcome absent such errors. See, e.g., *Loudermill*, 470 U.S. at 547, 105 S.Ct. at 1496; cf. *State v. Knight*, 734 P.2d 913, 920 (Utah 1987) ("[T]he likelihood of a different outcome must be sufficiently high to undermine confidence in [the decision]."); *State v. Villarreal*, 857 P.2d 949, 958 (Utah Ut.App.1993) (stating evidence must be "sufficiently inconsequential that we conclude there is no 'reasonable likelihood that the error affected the outcome of the proceedings' "(quoting *State v. Verde*, 770 P.2d 116, 120 (Utah 1989)), aff'd, 889 P.2d 419 (Utah 1995)). Under the facts of this case, we cannot say that Lucas was denied due process when the record shows that Lucas had actual notice of the excessive force and dishonesty charges, received written notice of the charges against him, and had a pretermination opportunity to respond to the charges.
>
> *Lucas*, at p. 755. See also, *Leavitt v. Salt Lake City Corp*., 442 P.3d 1217 (Utah App. 2019) ¶37.

In this case, much of Schvaneveldt's defense is exactly this argument. At the hearing he repeatedly questioned various South Davis supervisors regarding the policies related to investigation of employees and discipline in general. However, he utterly failed to produce any evidence that any failures or perceived failures of South Davis to prior to the issuance of the Pre-Disciplinary Hearing Notice caused a different outcome or, in fact, any harm at all. He failed to convince the Chief at the Pre-Disciplinary Hearing that he had not committed the alleged violations and that conclusion is fully supported by the evidence from the appeal hearing. There is simply no evidentiary support for any contention that had South Davis conducted the investigation described in

it's policies, the outcome of this case would have been different. Schvaneveldt was not harmed.[4]

The last issue is consideration of Schvaneveldt's substantive due process rights. A common theme throughout his defense is that he was being singled out or targeted for discipline, that others were not disciplined for similar violations, or that the process was inherently unfair to him. There is no evidence to support these contentions.

With respect to being "targeted, one witness did testify that from his perspective it looked like the department might be out to get Schvaneveldt. However, the witness was a former South Davis captain who has been retired for two years and qualified his opinion as being from the "outside." All other witnesses who were questioned about this subject, including the Chief and supervisors who wrote up the violations, denied any bias toward Schvaneveldt or any orders to single him out. Also, there was evidence that clearly show no bias toward Schvaneveldt by South Davis. For example, Captain Sayre specifically warning him that he was accumulating too many violations and "was on thin ice." Sayre described his purpose in making that statement to Schvaneveldt, when he testified "I was trying to make it very clear to Gary that there is a pattern here of things that he is not doing correctly at that time. I wanted to make it very specific to him that I'm letting him know we, we want to see him succeed; this is your final warning to start improving and correcting your actions." Sayre also testified that he had talked to Chief Powers and Deputy Chief Stewart about Schvaneveldt and stated "We talked about the pattern and him not being able to correct his actions. So I felt like it was my

[4] The evidence at the hearing was conflicting and the South Davis policy regarding the need for an investigation in this case in not completely clear. Having resolved this issue as set forth above, no ruling is made on the necessity for such an investigation under the policies.

responsibility when I came back to make sure that we could get him back on track and to hold him accountable." (Testimony of Capt. Sayre – Transcript p. 251-252). Similarly, Chief Stone testified that he thought about this case every day in the almost 3 weeks between the Pre-Disciplinary Hearing and when he made the decision to terminate Schvaneveldt. He testified that "this was not an easy decision." (Testimony of Chief Stone – Transcript p.38). In addition, several supervisors testified that they did not write up Schvaneveldt for each violation that they witnessed (MOSS)

Schvaneveldt attempted to show that he was treated differently by producing several photos as exhibits that show other South Davis employees not wearing their masks in apparent violation of policy. (Appellant Exhibit #23). From the evidence, it appears that in these specific situations, the other employees were not disciplined or "written up." However, without more, the photographs are not persuasive. There is no evidence that the employees repeated the violations numerous times like Schvaneveldt, nor is there any evidence that they refused to comply with orders or reminders from supervisors, like Schvaneveldt. There is no evidence that they are similarly situated or have comparable violation histories. This is a requirement of Utah law as stated by the Utah Court of Appeals in the *Leavitt* case cited above.

> We discern no abuse of discretion in the Commission's conclusions. The "comparable" information Leavitt presented to the Commission was insufficient to establish a prima facie case of inconsistent discipline. As this court has recognized, "[a] disciplined employee must do more than show that other employees received lighter punishments for similar offenses. The disciplined employee must identify employees in similar circumstances—employees with similar disciplinary histories and service time, for example—who received lighter punishments for similar offenses." *Perez v. South Jordan City* , 2014 UT App 31, ¶ 30, 320 P.3d 42 ; see also *Phillips v. South Jordan City* , 2013 UT App 183, ¶ 18, 307 P.3d 659 (rejecting an employee's argument that his termination was inconsistent when the employee failed to include "the performance

> histories or length of service ... which information may explain or justify the lesser discipline"). Here, Leavitt has not provided information that we have previously recognized as being crucial to demonstrate inconsistent discipline, such as the "disciplinary histories and service time" of the officers offered as "comparable" examples. See *Perez* , 2014 UT App 31, ¶ 30, 320 P.3d 42 ; see also *Phillips* , 2013 UT App 183, ¶ 18, 307 P.3d 659 (recognizing that "detailed information pertinent to a determination of whether the circumstances (not just the actions) of other officer sanctions were similar" is important in determining whether a sanction is inconsistent).

Leavitt v. Salt Lake City Corp., 442 P.3d 1217 (Utah App. 2019), ¶32.

The evidence showed that most of Schvaneveldt's violations related to uniform or mask issues were only written up by supervisors after reminders and/or his refusal to comply. For example, when Capt. Maxwell was asked about the reason that he issued a Schevaneveldt a written warning on December 28, h2020. he stated "One of the biggest driving factors was the fact that I had to continually ask him over and over throughout the day to comply with the policy after, you know, laying out expectations early on in the morning and have him accept those." (Testimony of Maxwell – Transcript p. 264).

Taken as a whole, there is substantial evidence to reach the conclusion that South Davis did not single out Schvaneveldt for discipline, did not treat him different than similarly situated employees, and that they treated him fairly throughout the process.

CONCLUSION

The standard of proof in this case, substantial evidence, is a relatively low bar to meet. The Utah courts have defined substantial evidence as a "quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion," That standard is clearly met in this case. The South Davis presented substantial evidence in in support of the decision to terminate employment. That evidence included numerous policy violations, insubordination, and previous disciplinary history.

Schvaneveldt's contention that he was being singled out or treated unfairly by South Davis is unfounded and unsupported by the evidence or the law. Neither is his contention that South Davis violated his due process.

There is clearly substantial evidence to convince a reasonable mind that South Davis's termination of Schvaneveldt's employment was appropriate.

EXHIBITS

The following Exhibits were admitted into evidence at the hearing:

Appellant Exhibit #1	Pre-Disciplinary Notice - January 5, 2021
Appellant Exhibit #2	Disciplinary Matrix
Appellant Exhibit #3	South Davis Policy 1017 – Corrective Action
Appellant Exhibit #4	Schvaneveldt Pre-Hearing Brief - January 14, 2021
Appellant Exhibit #6	Notice of Termination – January 26, 2021
Appellant Exhibit #20	South Davis Policy 103 – Policy Manual
Appellant Exhibit #21	South Davis Policy 1016 – Personnel Complaints
Appellant Exhibit #22	Matrix of Allegations in Pre-Disciplinary Notice
Appellant Exhibit #23	Photographs – December 4, 2020 / January 3,2020
Appellant Exhibit #24	Mask text – April 25, 2020
Appellant Exhibit #25	Schvaneveldt personnel evaluations

DECISION

IT IS HEREBY DETERMINED as follows:

The South Davis's termination of the employment of Schvaneveldt is supported by substantial evidence. This appeal is hereby decided in favor of South Davis Metro Fire and against Gary Schvaneveldt.

DATED THIS 4th day of June, 2021.

J. Richard Catten
Administrative Law Judge

Personnel Complaints

1016.1 PURPOSE AND SCOPE

This policy provides guidelines for reporting, investigation and disposition of complaints regarding the conduct of members of this department and the service provided by this department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1016.2 POLICY

This department takes seriously all complaints regarding service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of member misconduct in accordance with this policy and applicable federal, state and local law.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1016.3 PERSONNEL COMPLAINTS

Personnel complaints consist of any allegation of misconduct or improper job performance by any employee that, if true, would constitute a violation of department policy or rule or federal, state or local law. Allegations or complaints may be generated internally or by the public.

Inquiries about employee conduct or performance that, if true, would not violate department policy or rule or federal, state or local law, may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1016.3.1 CLASSIFYING COMPLAINTS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the member's Battalion Chief is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the designated department representative, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the designated department representative, such matters need not be documented as personnel complaints but may be further investigated or resolved as a complaint, depending on the seriousness of the complaint and the availability of sufficient information.

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1016.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1016.4.1 AVAILABILITY OF COMPLAINT FORMS

Personnel See attachment: Complaint Form (2).pdf will be available and clearly visible in public access locations within department facilities. Forms will also be available on the Department website. Forms may also be available at other government offices and facilities. Personnel complaint forms in languages other than English may also be provided as determined necessary or practicable.

Every supervisor is responsible for monitoring public satisfaction or inquiries regarding the personnel complaint process and forwarding to the Battalion Chief any suggestions for improvement or changes.

1016.4.2 SOURCES OF COMPLAINTS

(a) Members of the public may make complaints in any form, including in writing, by email, in person or by telephone.

(b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

(c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging the misconduct of a member that, if true, could result in disciplinary action.

(d) Anonymous complaints and third-party citizen complaints should be accepted and investigated to the extent that sufficient information is provided.

1016.4.3 ACCEPTANCE OF COMPLAINTS

All complaints will be courteously accepted by any member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed verbally, either in person or by telephoning the Department, and will be accepted by any supervisor. If a supervisor is not immediately available to take a verbal complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1016.5 COMPLAINT DOCUMENTATION AND TRACKING

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Fire Chief or authorized designee. The Chief shall provide a copy of the audit report to the Board.

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1016.6 DISCIPLINARY INVESTIGATIONS

All allegations of misconduct will be investigated as follows:

1016.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a complaint rests with the member's immediate supervisor. If the supervisor is: The complainant; Is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct, the Fire Chief or the authorized designee will direct that another supervisor investigate the complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

Supervisors shall be responsible for the following:

(a) Department supervisors should respond to all complaints in a courteous and professional manner.

(b) A supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Battalion Chief, Deputy Fire Chief and Fire Chief are notified as soon as practicable.

(c) A supervisor receiving or initiating any formal complaint shall ensure that a personnel complaint form has been completed as fully as possible. The original complaint form will then be directed to the Battalion Chief of the accused member, via the chain of command. The Battalion Chief will forward a copy of the complaint to the Deputy Fire Chief to take any appropriate action and/or assign the complaint for investigation. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor may orally report the matter to the Battalion Chief, Deputy Fire Chief or Fire Chief.

(d) A supervisor investigating any complaint should:

1. Make reasonable efforts to obtain names, addresses and telephone numbers of additional witnesses.
2. When appropriate, provide immediate medical attention and take photographs of alleged injuries as well as accessible areas of non-injury.

(e) When the nature of a personnel complaint relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall promptly contact the Administration and the Battalion Chief for direction regarding his/her role in addressing the complaint.

(f) Supervisors who receive a citizen complaint that can be resolved immediately should do so. Follow-up contact with the person who made the complaint should be made within 24 hours of the Department receiving the complaint. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Battalion Chief.

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(g) Unresolved citizen complaints shall be forwarded to the Battalion Chief to determine whether to contact the person who made the complaint or assign the complaint for investigation.

(h) The supervisor shall ensure that the procedural rights of the accused member are followed.

(i) Within three days after assignment, the complainant should be informed of the investigator's name and the complaint number.

(j) Interviews of the complainant should be conducted during reasonable hours.

1016.6.2 INVESTIGATION PROCEDURES

The following procedures should be followed with regard to any accused member subject to investigation by the Department:

(a) Prior to any interview, the member should be informed of the nature of the investigation.

(b) Interviews of accused members should be conducted during reasonable work hours of the member and, if the member is off-duty, the member shall be compensated if required.

(c) No more than two interviewers should ask questions of an accused member to prevent confusion or misunderstanding.

(d) All interviews shall be for a reasonable period or duration and the member's personal needs shall be accommodated.

(e) No member shall be subjected to offensive or threatening language nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions and be subject to discipline for failing to do so. Nothing administratively ordered may be provided to a criminal investigator. An appropriate *Garrity* warning shall be issued to the member prior to initiating questioning.

(f) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview.

(g) A member subjected to interviews that could result in punitive action shall have the right to have a representative of his/her choosing during any interrogation. However, in order to maintain the integrity of each individual member's statement, involved members shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed.

(h) All members shall provide complete and truthful responses to questions posed during interviews.

(i) No member may be compelled to submit to a deception detection device/polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

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1016.6.3 INVESTIGATION FORMAT
Investigations of complaints should be timely, detailed, complete and follow this format:

Introduction - Include the identity of the member, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a very brief summary of the facts giving rise to the investigation.

Summary of allegations - List the allegations separately, including applicable policy sections, with a very brief summary of the evidence relevant to each allegation.

Evidence as to each allegation - Each allegation should be set forth with the details of the evidence applicable to each allegation and include comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1016.6.4 ADMINISTRATIVE LEAVE
When a complaint of misconduct is of a serious nature, or when circumstances dictate that allowing the accused to continue to work would adversely affect the mission of the Department, the Fire Chief or the authorized designee may temporarily assign an accused employee to administrative leave. The Fire Chief or the authorized designee shall notify the Administration in writing of the employee's administrative leave and the cause for the leave.

1016.7 POST-INVESTIGATION PROCEDURES
Upon completion, the report should be forwarded to the Fire Chief through the chain of command of the involved member. Each level of command should review and include their comments in writing before forwarding the report. The Fire Chief may accept or modify the classification and recommendation for disciplinary action contained in the report.

1016.7.1 DEPUTY FIRE CHIEF RESPONSIBILITIES
Upon receipt of any completed personnel investigation, the Deputy Fire Chief of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Deputy Fire Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Fire Chief, the Deputy Fire Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Fire Chief, the Deputy Fire Chief shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

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1016.7.2 RESPONSIBILITIES OF THE FIRE CHIEF

Upon receipt of any written recommendation for disciplinary action, the Fire Chief shall review the recommendation and all accompanying materials. The Fire Chief may modify any recommendation and/or may return the file to the Deputy Fire Chief for further investigation or action.

Once the Fire Chief is satisfied that no further investigation or action is required by staff, the Fire Chief shall determine the amount of discipline, if any, to be imposed. In the event that disciplinary action is proposed, the Fire Chief shall provide the member with written notice of the following information:

(a) Access to all of the materials considered by the Fire Chief in recommending the proposed discipline.

(b) An opportunity to respond orally or in writing to the Fire Chief within five days of receiving the notice.

1. Upon a showing of good cause by the member, the Fire Chief may grant a reasonable extension of time for the member to respond.

2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

(c) Once the member has completed his/her response, or if the member has elected to waive any such response, the Fire Chief shall consider all information received in regard to the recommended discipline. The Fire Chief shall afford the member a pre-disciplinary meeting at which the member may present his/her response and any supporting material or arguments. The member may waive the pre-disciplinary meeting and allow the Fire Chief to render a decision based on the material gathered in the investigation and any material or arguments submitted by the member. The Fire Chief shall thereafter render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Fire Chief has issued a written decision, the discipline shall become effective.

1016.8 PRE-DISCIPLINE MEMBER RESPONSE

The pre-discipline process is intended to provide the accused member with an opportunity to present a written or oral response to the Fire Chief after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The member shall consider the following:

(a) This response and/or pre-disciplinary meeting is not intended to be an adversarial or formal hearing.

(b) Although the member may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

(c) The member may suggest that further investigation could be conducted or the member may offer any additional information or mitigating factors for the Fire Chief to consider.

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(d) In the event that the Fire Chief elects to cause further investigation to be conducted, the member shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.

(e) The member may thereafter have the opportunity to further respond orally or in writing to the Fire Chief on the limited issues of information raised in any subsequent materials.

1016.9 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file. The tender of a retirement or resignation by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1016.10 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary members may appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step and termination from employment. The member may appeal using the procedures established in any operative personnel rules.

1016.11 AT-WILL AND PROBATIONARY MEMBERS

At-will and probationary members may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy and without notice or any cause at any time. These members are not entitled to any rights under this policy.

Any probationary period may be extended an additional period equal to the base probationary period in cases where the member has been absent for more than a week or when additional time to review the member is considered to be appropriate based on performance.

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Policy Manual

103.1 PURPOSE AND SCOPE

The Policy Manual of the South Davis Metro Fire Department is hereby established and shall be referred to as the Policy Manual or the manual. The manual is a statement of the current policies, rules and guidelines of this department. All members are expected to conform to the provisions of this manual.

All prior and existing policies, manuals, orders and regulations that are in conflict with this manual are revoked, except to the extent that portions of the existing manuals, procedures, orders and other regulations that have not been included herein shall remain in effect where they do not conflict with the provisions of this manual.

103.2 POLICY

Except where otherwise expressly stated, the provisions of this manual shall be considered as guidelines. It is recognized that fire, emergency medical services and rescue work is not always predictable and circumstances may arise that warrant departure from these guidelines. It is the intent of this manual to be viewed using an objective standard, taking into consideration the sound discretion entrusted to the members of this department under the circumstances reasonably available at the time of any incident.

103.2.1 DISCLAIMER

The provisions contained in the Policy Manual are not intended to create an employment contract nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the South Davis Metro Fire Department and shall not be construed to create a higher standard or duty of care for civil or criminal liability against South Davis Metro Fire Department, its officials or members. Violations of any provision of any policy contained within this manual shall only form the basis for department administrative action, training or discipline. The South Davis Metro Fire Department reserves the right to revise any policy content, in whole or in part.

103.2.2 SEVERABILITY

In the event that any term or provision of this Policy Manual is declared illegal, invalid or unenforceable by any court or any federal or state government agency, the remaining terms and provisions that are not affected shall remain in full force and effect. If any provision of the Policy Manual is found to be in conflict with a local, state or federal law, such law shall take precedence over that provision of the Policy Manual.

103.3 AUTHORITY

The Fire Chief shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Fire Chief or the authorized designee is authorized to issue Departmental Directives, which shall modify those provisions of the manual to which they pertain. Departmental Directives shall remain in effect until such time as they may be permanently incorporated into the manual.

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103.4 DEFINITIONS

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

Adult - Any person 18 years of age or older.

Appeals Board - A six member board consisting of members of the Board of Trustees organized for the intent of hearing appeals by employees regarding disciplinary action.

Appointed Official - An employee that obtained their current position by appointment rather than through the Merit System.These positions include the Fire Chief and the Deputy Fire Chief positions.

Authority Having Jurisdiction (AHJ) – The State Fire Marshal, an authorized deputy of the State Fire Marshal or the local fire enforcement authority (Utah Code 15A-5-102).

Fire Service Area - The Fire Service Area of South Davis Metro.

Non-sworn - Employees and volunteers who are not engaged in fire suppression as part of their primary duties.

Department/SDMFSA - The South Davis Metro Fire Department.

Chemical Screening - A generally accepted and proven test methodology as recommended by the laboratory and medical experts selected by the Department consisting of two tests: a screening test and a conformation test of blood, breathe or urine, or any combination thereof.

Civilian Personnel - Those employees who work 30-40 hours per week and are non-sworn firefighters.

Combat Shift Personnel-Those employees who are sworn firefighters scheduled on one of three platoons and work the 48/96 Schedule.

Combat Day Personnel -Those employees who are sworn firefighters assigned to a 40 hour work schedule.

Corrective Action - The overall goal of improving employee performance.

Discipline - The term used for corrective actions that are punitive in nature and may be subject to certain appeals rights (Utah Code 10-3-1106).

Employee - Any person employed by the Department.

Fire Code - The current State adopted edition of the International Fire Code, excluding appendices, as issued by the International Code Council, Inc., except as amended as part of the Utah State Fire Code (Utah Code 15A-5-103).

Firefighter/Sworn, Appointed or elected - Those members, regardless of rank, who perform fire suppression duties as part of their primary duties as sworn, appointed or elected members of the South Davis Metro Fire Department.

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Harassment - The act of systematic and/or continued unwanted and annoying actions or speech of one party or group, including threats and demands which are libelous, threatening, abusive, foul, or obscene, which cause a hostile work environment which creates the inability of an member of the Department to thrive in their daily environment.

Health and Safety Officer - Members designated by the Fire Chief as responsible for the administration of health and safety-related programs and policies for the South Davis Metro Fire Department. The Fire Chief shall assume responsibility for health and safety-related policy and program administration if there is no designee.

Insubordination - A situation where a supervisor has communicated a lawful work directive or order and the subordinate has refused that directive through words or actions either implicitly or explicitly.

Manual - The South Davis Metro Fire Department Policy Manual.

May - Indicates a permissive, discretionary or conditional action.

Member - Any person who is employed or appointed by the South Davis Metro Fire Department, including:

- Full- and part-time employees
- Sworn, appointed or elected firefighters
- Reserve firefighters
- Non-sworn employees
- Volunteers

On-duty - Member status during the period when he/she is actually engaged in the performance of his/her assigned duties.

Order - A written or verbal instruction issued by a superior.

Privileged Information - Information the disclosure of which is prohibited by state or federal law to include all information not classified as "Public" under the Utah Government Records Access and Management Act, information the disclosure of which is prohibited under HIPAA. Examples could include patient information, knowledge of business practices, proprietary information, phone lists or any other information gained as a result of employment with South Davis Metro Fire.

Personnel File - The collective information that is specific to each employee whether maintained in the centralized personnel files or maintained by supervisory officer for employee evaluation, discipline or other supervisory purposes. It included: performance appraisals, beneficiary designation forms, corrective action notices, job actions, letters of commendation, medical files or any other information specific to the individual employee.

Random Drug Testing - A form of drug testing whereby the method for determining the test is devised through a random computer model to test employees engaged in safety sensitive positions without prior notice.

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Rank - The title of the classification held by a firefighter.

Relative - A father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandson or granddaughter.

Shall or will - Indicates a mandatory action.

Should - Indicates a generally required or expected action, absent a rational basis for failing to conform.

Supervisor - A person in a position of authority regarding hiring, transfer, suspension, promotion, discharge, assignment, reward or discipline of other department members, directing the work of other members or having the authority to adjust grievances. The supervisory exercise of authority may not be merely routine or clerical in nature but requires the use of independent judgment.

The term "supervisor" may also include any person (e.g., firefighter-in-charge, lead or senior worker) given responsibility for the direction of the work of others without regard to a formal job title, rank or compensation.

Trakstar - The currently used proprietary web-based computer program used for tracking and performing employee performance evaluations.

103.5 DISTRIBUTION OF THE POLICY MANUAL

An electronic version of the Policy Manual will be made available to all members on the department network for viewing and printing. No changes shall be made to the manual without authorization from the Fire Chief or the authorized designee.

Each member shall acknowledge that he/she has been provided access to, and has had the opportunity to review, the Policy Manual and Departmental Directives. Members shall seek clarification as needed from an appropriate supervisor for any provisions that they do not fully understand.

103.6 PERIODIC REVIEW OF THE POLICY MANUAL

The Fire Chief will ensure that the Policy Manual is periodically reviewed and updated as necessary.

103.7 REVISIONS TO POLICIES

All revisions to the Policy Manual will be provided to each member on or before the date the policy becomes effective. Each member will be required to acknowledge that he/she has reviewed the revisions and shall seek clarification from an appropriate supervisor as needed.

Members are responsible for keeping informed of all Policy Manual revisions.

Each Deputy Fire Chief will ensure that members under his/her command are aware of any Policy Manual revision.

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Policy Manual

All department members suggesting revision of the contents of the Policy Manual shall forward their written suggestions to their supervisors, who will consider the recommendations and forward them to the command staff as appropriate.

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EEOC Form 161-B (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: **Gary Schvaneveldt**
3725 North 1100 West
Pleasant View, UT 84414

From: **Phoenix District Office**
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
540-2021-01989	**Patricia A. Miner, Supervisory Investigator**	**(602) 661-0040**

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐ More than 180 days have passed since the filing of this charge.

☐ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☐ The EEOC is terminating its processing of this charge.

☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)

Elizabeth Cadle,
District Director

03/23/2021
(Date Issued)

cc: **Director**
Human Resources
SOUTH DAVIS METRO FILE DISTRICT
255 South 100 West
Bountiful, UT 84010

Randall Ewards, Esq.
RANDALL K. EDWARDS
Attorney at Law
P.O. Box 129
Bountiful, UT 84011

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

GARY SCHVANEVELDT

(b) County of Residence of First Listed Plaintiff WEBER
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
RANDALL K. EDWARDS, JEANNE D. MARSHALL
70 N. MAIN, STE. 105, BOUNTIFUL, UT 84010

DEFENDANTS

SOUTH DAVID METRO FIRE DEPARTMENT

County of Residence of First Listed Defendant DAVIS
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
TODD GODFREY
2118 EAST 3900 SOUTH, STE. 300, SLC, UT 84124

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 USC 1983, 29 USC 621

Brief description of cause:
CIVIL RIGHTS, AGE DISCRIMINATION

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ as decided by court

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE N/A DOCKET NUMBER N/A

DATE
JUNE 18, 2021

SIGNATURE OF ATTORNEY OF RECORD
Randall Edwards

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____